

EXHIBIT 1

TENNESSEE DEMOCRATIC PARTY
STATE EXECUTIVE COMMITTEE MEETING
SEPTEMBER 13, 2008

TRANSCRIPT OF PROCEEDINGS

September 13, 2008

BERES & ASSOCIATES
230 Fourth Avenue North, Suite 503
Post Office Box 190461
Nashville, Tennessee 37219-0461
(615) 742-2550

Beres & Associates

A P P E A R A N C E S

For Senator Kurita:

Mr. Robert Rochelle
Mr. T. Price Thompson, III
Attorneys at Law
109 North Castle Heights Avenue
Lebanon, Tennessee 37087

For Tim Barnes:

Mr. George E. Barrett
Mr. Douglas S. Johnston, Jr.
Attorneys at Law
217 Second Avenue North
Nashville, Tennessee 37201

Co-Counsel for Tim Barnes:

Mr. C. Dewey Branstetter, Jr.
Mr. Michael E. Wall
Attorneys at Law
227 Second Avenue North, Suite 400
Nashville, Tennessee 37201

On behalf of the Democratic Party:

Mr. W. Brantley Phillips, Jr.
Mr. Jeffrey P. Yarbrow
Attorneys at Law
2700 Regions Bank Building
Nashville, Tennessee 37238

Mr. Gray Sasser,
Chairman of the Tennessee Democratic Party

Beres & Associates

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3	Exhibit No. 1	Number 1, Contest of Election; 263	
4		number 2, Supplemental Filing	
5		Contest of Election; number 3,	
6		Senator Kurita's response to	
7		Election Contest; number four,	
8		Mr. Barnes' witness list;	
9		number 5, Senator Kurita's	
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11	Exhibit No. 2	"TIM BARNES' BRIEF IN SUPPORT 263	
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18		DISTRICT 22 STATE SENATE	
19		PRIMARY ELECTION CONTEST	
20		SCHEDULED FOR SEPTEMBER 13,	
21		2008"	
22			
23			
24			
25			

1 BE IT REMEMBERED, on the 13th day of
2 September, 2008, at 9:44 a.m, the above-referred to
3 matter came on before the above-styled forum at the
4 Downtown Sheraton Hotel, Nashville, Tennessee.

5 The parties having announced ready, the
6 following proceedings were had, to wit:

7 *****

8 CHAIRMAN SASSER: Thank you. I hereby call
9 the meeting of this special committee of the State
10 Primary Board to order.

11 While you all should have a chance to review
12 the rules, I'd like to highlight a couple of points
13 before we begin.

14 As you will note, each side has agreed to
15 certain time restraints in connection with putting on
16 their case. We have two timers to make sure that
17 neither decide exceeds its allotted time.

18 Any questions asked by any member of this
19 committee will not deduct from the time allotted either
20 side. Each side will be given ten minutes for an
21 opening statement and I would ask the members of this
22 committee to refrain to ask any questions during those
23 opening statements.

24 Also, each side has been allotted 15 minutes
25 for their closing statements and I would again ask

1 members of this committee to refrain from asking
2 questions during the closing statements.

3 As agreed by Mr. Barnes and Senator Kurita,
4 Mr. Barnes, as the contestant, shall have the burden of
5 proof in this contest. This could be interpreted as
6 meaning a tie goes to Senator Kurita.

7 Obviously, there's been much discussion in
8 the media about this race and this contest.

9 Additionally, I understand that the
10 contestants themselves or supporters of Mr. Barnes or
11 Senator Kurita may have contacted members of this
12 committee and the State Primary Board prior to this
13 meeting.

14 Again, I would like to caution every member
15 of this committee to base their decision solely on the
16 evidence presented today.

17 One final note, you will find, members of
18 this committee, there are two late filings by or two
19 filings that were made last night about 9:00 p.m. by
20 Mr. Rochelle and Mr. Thompson as counsel for Senator
21 Kurita. Copies of those materials have been made
22 available to each of you at your seat.

23 Are there any questions before we begin from
24 the committee about how we're going to do this? Yes,
25 Price.

1 MR. THOMPSON: You mentioned the exhibits. I
2 have copies of those. I would like to be able to give
3 those to anyone who didn't get one here today.

4 CHAIRMAN SASSER: Mr. Thompson is going to be
5 passing out to the other members of the Executive
6 Committee some filings that Mr. Rochelle and Mr.
7 Thompson made on behalf of Senator Kurita.

8 Mr. Barrett, Mr. Rochelle, are y'all ready?

9 MR. BARRETT: We're ready.

10 CHAIRMAN SASSER: Hearing no questions from
11 the Committee, Mr. Barrett, you may proceed. And I
12 would ask the timers to start the clock when he starts.
13 Ten minutes for his opening statement.

14 MR. BARRETT: Don't I get a free joke?

15 CHAIRMAN SASSER: If Mr. Rochelle will give
16 you a free joke you can have it, George.

17 MR. BARRETT: Can I have a free joke?

18 MR. ROCHELLE: Knowing George's jokes, I'm
19 tempted not to agree.

20 MR. BARRETT: I'll tell my joke this way:
21 I'll introduce myself. I'm George Barrett, lawyer in
22 Nashville, along with Douglas Johnston, Dewey
23 Branstetter and Mike Wall representing Mr. Barnes.

24 My motto is brevity is the soul's will and
25 every Sunday I sit it in the last pew at the Cathedral

1 so if the sermon gets too long I can slip out.

2 Several years ago we got a new Bishop, Bishop
3 Kmeic and I was sitting in the last few pew and I saw
4 him come in back, he's getting ready to say something.

5 I went back and I introduced myself, "Bishop
6 Kmeic, I'm George Barrett, I'm a native Nashvillian.
7 I'm glad to have you here but there's a great tradition
8 in the Dioceses of Nashville, no long sermons" and he
9 said, "What did you say your name was?" I said, "My
10 name is George Barrett." He said, "Mr. Barrett, you're
11 ex-communicated."

12 The last time I appeared here was in 1962
13 when I sought to certify the certification of a
14 Democratic nominee from the United States Congress of
15 the Fifth Congressional District.

16 We were successful in this effort and the
17 State Democratic Primary Board set aside the election
18 and in the general election, Dick Fulton won by a
19 landslide and went on for a very distinguished public
20 career.

21 I'd like to thank the members of the
22 Committee for agreeing to serve and let me say that
23 setting an election aside is not a simple task and it's
24 not to be taken lightly.

25 I've set a number of them aside or have been

1 successful in having Courts and Primary Boards set them
2 aside and I do not take it lightly.

3 The allegations here are serious. They go to
4 the right of the people to choose -- the right of
5 Democrats to choose who their nominee will be.

6 Let me allay your fears that you're on sound
7 legal ground. In the Taylor case, Taylor versus State
8 Democratic Executive Committee, the State Supreme
9 Court, in effect, found that the Democratic, State
10 Democratic Primary Board is the Supreme Court of the
11 Democratic Party in choosing who your nominee should
12 be.

13 Let there be no fear that there's not legal
14 precedent for what you are doing.

15 It's also protected by Federal Law in the
16 case of Democratic Party versus Jones, where the
17 Supreme Court said that the State of California could
18 not unduly regulate the Democratic primary in that
19 state where they declared it an open primary.

20 So there's ample State and Federal authority
21 to support the proposition that we're asking you to
22 embark upon. Let me assure you to begin with, you are
23 not plowing new ground.

24 As just a year and a half ago in 2007, a
25 similar contest was held in the State Senate which was

1 the sole judge of its members. There are two tests to
2 challenge an election. One is a numerosity test. That
3 is if you lose by a number of votes, you have to be
4 able to show a number of illegal votes, of votes that's
5 not been cast that makes you the winner, and the second
6 is that if there's so much uncertainty about the
7 conduct of the election, that it creates an incurable
8 uncertainty that you may set the election aside.

9 In the Ford case, there were 13 votes
10 separating Senator Ford from her opponent. The
11 Republican controlled Legislature could only turn up 12
12 illegal votes so they did not meet the first prong.

13 They met the second prong. There was so much
14 confusion about the election that it created an
15 incurable uncertainty. You're not being asked to
16 embark upon an uncharted sea.

17 There's precedent, binding or not, and
18 Senator Kurita was a member of that body and voted to
19 oust Senator Ford. It subsequently ended up being
20 reelected.

21 We propose to present evidence in two forms
22 to support each and every allegation we make. We have
23 live witnesses and we have affidavits.

24 The attorney for the County Election
25 Commission was kind enough to make certain election

1 officials available for interviews by Mr. Rochelle and
2 myself and Mr. Johnston last Tuesday.

3 We are going to present our evidence in
4 relation to the numbered paragraphs in the Contest of
5 Election which you received a copy of and in relation
6 to the various witnesses presented in Montgomery County
7 so that we can show that we believe we've successfully
8 raised credibility questions about the testimony of the
9 witnesses in the Montgomery County Election Commission
10 and our own witnesses.

11 Ours is a simple proposition that the
12 Republicans set out to distort this election, to,
13 quote, muddy the water and choose our nominee.

14 What's the proof going to be? Let me give
15 you just one, an officer of the Cheatham County
16 Republican Party voted in the Democratic primary. Her
17 application for ballot, her -- the Web Page for the
18 Cheatham County Republican Party and her application to
19 vote in the Democratic primary is attached in our
20 supplemental filing for the Contest of Election.

21 There's a concerted effort of Republicans.
22 We'll present witnesses that went to the Republican
23 headquarters in Montgomery County and inquired about
24 the Senate election and were asked to vote for Kurita,
25 Senator Kurita because she was, quote, good for

1 Republicans.

2 She violated, Senator Kurita violated the
3 most basic law we have, one of them is the invasion of
4 the privacy of the polling place. We allege she did it
5 twice in early voting and did it in Cheatham County and
6 we'll present a live witness that witnessed that and
7 will testify as to that.

8 Now, it's been facetiously referred to as
9 "Pottygate" but Mr. Rochelle answered the allegations
10 to Senator Kurita but he did not address the
11 allegations of her manager, a male followed her into
12 that polling place and that has not been addressed.
13 That stands unrefuted as of this time.

14 A voting analysis which we attached showed
15 that 1200 new voters voted in this election, 500 of
16 whom had not previously voted and 700 of whom had voted
17 in one to seven Republican elections back to the year
18 of 2000, 39 of whom, 39 of whom had voted in the last 7
19 Republican primary.

20 You call that hardcore and that is sufficient
21 vote to change the outcome of this election.

22 And if there's any doubt as to where the
23 Republicans stood in this primary, let me read you a
24 dispatch for the Nashville City Paper, July 16th, 2002.

25 MR. ROCHELLE: Before you start reading,

1 Mr. Chair, I would like to raise the question as to I
2 take it Mr. Barrett is going to introduce a newspaper
3 article attempting to prove the truth of the matter.

4 That's hearsay and Tennessee, as in every
5 Court in this country, hearsay is not admissible to
6 prove the truth of the fact, and so Mr. Barrett
7 started -- this is just the first example of filing
8 hearsay where in this case it's a newspaper article and
9 attempting to prove the existence of a fact, the truth
10 of a fact.

11 That nowhere is admissible in any Court in
12 this country because it's not -- history has showed us
13 over 200 years to teach us that hearsay where you read
14 it in the newspaper or say somebody else said I heard
15 somebody else say that something happened is not proof
16 that that something happened.

17 Now, y'all have to decide whether you want to
18 hear hearsay and give it what weight you wish to give
19 it or whether you want to exclude. I raise that issue
20 now, not expecting Mr. Barrett to start introducing
21 evidence in the presentation of the case but since he
22 brought up this newspaper article I have to say to you
23 I love my friends in the media and I have great respect
24 for them but in 30-something years of being in public
25 life, I don't know that I've ever read a newspaper

1 story or seen a television coverage of an event that I
2 was involved in that was 100 percent accurate.

3 MR. BARRETT: May I reply?

4 CHAIRMAN SASSER: Before you respond, I
5 really appreciate so many members of the public being
6 here today and participating, but we do want to keep
7 this on a tight schedule.

8 If everybody can hold their applause and
9 complaints until the end, that would be great. Thank
10 you.

11 MR. BARRETT: There are exceptions to the
12 Hearsay Rule. One of them is public documents and
13 newspapers. Let me say that Senator Rochelle's
14 response to our Contest of Election is Exhibit H is a
15 newspaper article.

16 So, we've chosen to rely upon a newspaper
17 article in response to our contest for election, and
18 thirdly, this is not a Court of Law, the Rules of
19 Evidence are not applicable.

20 MR. ROCHELLE: And I would say to you if you
21 choose to ignore the exhibit, the newspaper article or
22 Mr. Barrett objects to it, but in that case the
23 question was, was there actually a newspaper article
24 that said Mr. Barnes was a Republican?

25 So I presented that actual newspaper article

1 and in this case, it's just the beginning of it, we've
2 got affidavits and all sorts of things that Mr. Barrett
3 is going to try to introduce that's classic hearsay.

4 That's why I raise the point. Go ahead sort
5 of decide which direction you're going to go now.

6 CHAIRMAN SASSER: Thanks Mr. Rochelle. As
7 you know all too well, however, this is not a Court of
8 Law, it's a State Primary Board so we're not bound by
9 the Rules of Evidence.

10 We're going to attempt here to give both
11 parties as wide a leeway as possible. We want to build
12 as complete a record as possible.

13 I understand that some of your materials
14 there are some unsworn documents and for that reason
15 we're going to allow both parties great latitude in
16 what they present today.

17 MR. BARRETT: The rules so provide,
18 Mr. Chairman.

19 CHAIRMAN SASSER: I think you got about a
20 minute and a half left.

21 MR. BARRETT: "Ramsey Targets Former GOP
22 Colleagues While Helping Democrat Kurita." That's
23 July 16th, 2008 in the Nashville City Paper.

24 The last quote, "Ramsey said he's helped
25 raise money for Kurita through calling donors on her

1 behalf as well as contributors calling him and asking
2 if he minded if they gave to her. 'I want to do
3 anything I can to help', Ramsey said, added that he
4 feels 'very confident' that Kurita will defeat
5 Democratic challenger Tim Barnes on the August 7th
6 primary."

7 It's no secret that Senator Kurita staged a
8 Democratic caucus, vote for Lieutenant Governor Wilder
9 and she did not. That's no secret and that can't be
10 denied.

11 To add insult to injury, there's an article
12 yesterday, an AP article which is titled "Tennessee GOP
13 Democratic candidate e-mailed" -- this overlapped.
14 It's yesterday. I think it's in today's paper.

15 "Talk about bipartisanship, two State Senate
16 candidates from opposing parties both aligned with
17 Republican Senate Speaker Ron Ramsey, briefly shared an
18 e-mail distribution list signing up for the e-mail news
19 release from Republican candidate 'Mae Faulk' resulted
20 in a confirmation notice from Democratic Senator
21 Rosalind Kurita of Clarksville."

22 CHAIRMAN SASSER: Your time is up.

23 MR. BARRETT: Thank you.

24 MR. ROCHELLE: I hope you'll allow some
25 informality here today. Since we started out that way,

1 I have not put on my coat yet.

2 CHAIRMAN SASSER: I'll take mine off.

3 MR. ROCHELLE: Because of that, we all know
4 each other, occasionally I'm going to call George
5 George. I have great respect for George Barrett and
6 we've giddied each over other the years many times and
7 please don't accept that as any sign of disrespect that
8 I'm not calling somebody by their last name.

9 George is a great friend of mine and I'm a
10 great admirer of his. A man once said of George
11 Barrett, though, "George knows a lot of history, and
12 some of it is true."

13 If we're going to try this case based on
14 newspaper reporters writing stories -- if you'll
15 notice, he didn't copy the whole article. George read
16 a little part at the top that they called -- wanted to
17 bring it in they could have make them read it.

18 Didn't read the rest of the story where it
19 said Senator Kurita had no knowledge whatever of any of
20 that. It was a vendor's mistake somewhere. That's why
21 you be cautious of the hearsay offered..

22 This is actually the second one of these
23 contests that I've ever been in. The other one was in
24 a Court and I had a fella that got elected to the
25 County Commission by one vote in Governors Crossroads.

1 And we won. Fella is now State Representative Track
2 Bone when he was running for the County Commission.

3 So when Senator Kurita called me and asked me
4 to be involved in this case, I thought well, I'll draw
5 upon my massive amount of experience, that one case,
6 and I found there's a lot more to learn, lot more to
7 know.

8 Let me make one personal remark to you. I
9 have a medical condition and that medical condition is
10 called central tremor and occasionally my hands shake
11 and occasionally my head nods. If my head is nodding,
12 don't think that I'm agreeing with George Barrett.

13 Now, I'm not going to go into the evidence
14 right now. That's what this hearing is about. You'll
15 hear the evidence.

16 Basically, we've got our response that we
17 filed, we've got a reply brief that we filed. Price
18 Thompson, who is co-counsel, my associate from
19 Clarksville, originally, we're going to enter all of
20 those exhibits, attachments, exhibits at the proper
21 time.

22 We'll just ask that they be introduced.
23 We'll provide Senator Kurita to testify and so that
24 you'll be able to ask her questions if you'd like to.

25 So we don't expect to be parading witnesses

1 in here. George is going to have to parade some
2 witnesses in here. Understand, everybody has been
3 acting under a very tight timeframe.

4 There's five days after the vote is certified
5 which usually comes 10, 11 days after the election and
6 then they have to file a contest. It's supposed to be
7 everything, fully stated all contests, all allegations.
8 They've added a little bit at the last part here. We
9 hadn't said anything about that yet. We may later.

10 Then we have -- we didn't have to file a
11 response until today. We didn't have to tell Mr.
12 Barrett or anybody else what our position was until
13 today.

14 Instead, we chose, as soon as we could get
15 prepared, to file that response. The election workers
16 were key to this because all Mr. Barrett's allegations
17 under the first theory that he started under was --
18 dealt with misdirecting voters.

19 So we needed to talk to those folks. The
20 attorney for the Montgomery County Election Commission
21 chose who we could talk to, got them together and we
22 interviewed them Tuesday, and then we had to have it
23 typed up. That transcript got to us yesterday and so
24 that's why there was a pleading filed last night at
25 9:00.

1 We didn't have to file any pleading but we
2 filed the brief of law and the argument and that's what
3 we passed out a little bit awhile ago.

4 I hope that each and everyone of you has read
5 the contest. I hope that each and everyone of you have
6 read the response. I hope that each and everyone of
7 you have read the argument that Mr. Barrett put forth
8 and the argument that we filed at 9:02 last night.

9 We ask you today to decide this case on the
10 law and the facts. Read the exhibits, listen to the
11 witnesses, don't worry so much about the lawyers, and
12 make the right decision for both of these parties and
13 for the benefit of the people of Tennessee and the
14 Democrats of Tennessee, including them.

15 What you do here today will provide precedent
16 for -- if you're unlucky enough to have one of these
17 cases filed against in the future. Really how you
18 treat this case, to a large extent, is going to decide
19 whether you're going to be down here every year
20 deciding, or two years deciding a bunch of election
21 contests.

22 If at anytime you have a question for me or
23 Mr. Thompson, if you'll let the Chairman know, we'll be
24 glad to respond to the best of our ability. Thank you.

25 CHAIRMAN SASSER: Mr. Barrett, if y'all want

1 to call your first witness?

2 MR. JOHNSTON: Mr. Allen Haynes. While he's
3 coming up, Mr. Haynes has submitted an affidavit and
4 that is -- should be in your materials in support of
5 Paragraph 5 of the contest.

6 CHAIRMAN SASSER: Mr. Johnston, we've gotten
7 so many materials. You want to let us know what
8 exhibit that is attached to, what document that --

9 MR. JOHNSTON: In the exhibits attached to
10 our contest, they are attached by paragraph. There
11 will be a sheet that says Paragraph 5 and it will be
12 right behind, should be behind that one.

13 Are we swearing these witnesses?

14 CHAIRMAN SASSER: Yes. The court reporter
15 can swear the witnesses in, please.

16

17 - - -

18

19

20 ADAM SHANE HAYNES,

21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. JOHNSTON:

23 Q Mr. Haynes, we're going to try to create a
24 record here but allow everyone in the back to hear
25 everything that you have to say.

1 So if you can speak closely into that
2 microphone, I think that will help.

3 CHAIRMAN SASSER: Mr. Johnston, we do have an
4 electronic evidence presenter here today. You'd like
5 to use that, feel free.

6 Q Mr. Haynes, you've just been introduced to
7 the counsel, to the Committee. Would you tell them
8 just a little bit about yourself, where you live, what
9 you do for a living, that sort of thing.

10 A I live in Clarksville, Tennessee. I'm a
11 student at Austin Peay State University, junior with a
12 science major. Currently serving as President of the
13 College Democrats at Austin Peay. Political Director
14 for the Tennessee College of Democrats.

15 Q Now, Mr. Haynes, in this process, you have
16 supplied an affidavit in support of Mr. Barnes'
17 contest, have you not?

18 A Yes, sir.

19 Q And in just a minute I'm going to hand you a
20 copy of that. Let me just ask you, in July of this
21 year, did you visit the Republican headquarters in
22 Montgomery County?

23 A Yes, I did.

24 Q What was the purpose in doing that, sir?

25 A My purpose was it was open and, being

1 curious, I wanted to see what campaign materials they
2 had there for other candidates such as Senator
3 Alexander, obviously Marsha Blackburn had a candidate
4 there, wanted to see and what they had, being curious,
5 political signs made. Part of the thinking.

6 Q And when you were down there on that day, did
7 you speak to any of the Republican workers there in the
8 headquarters?

9 A Yes, I did.

10 Q How many did you speak to?

11 A There were two there, one male and female.

12 Q Tell us about that conversation, please, sir.

13 A It was just brief conversation as I was
14 looking at materials. We spoke back and forth about
15 different races, about what was going on in Montgomery
16 County, the two districts.

17 Obviously, I brought up the 22nd District
18 Senate race, about just wondering why there was no
19 Republican in the race, and they kind of skated around
20 that and said, you know, since I didn't live in a
21 Congressional District, it didn't matter; I live in the
22 John Tanner District, he has no Republican opposition.

23 It would be okay if I switched over to the
24 Republican -- to the Democratic primaries for Senator
25 Kurita.

1 Q And did one or both of these workers tell you
2 that?

3 A One told me that, the other one just nodded
4 her head.

5 Q Alright. Let me hand you a copy of your
6 affidavit, Mr. Haynes. Is that a true and exact copy
7 of that affidavit, sir?

8 A Yes, it is.

9 MR. JOHNSTON: Just for identification
10 purposes in case any of you haven't found it yet,
11 that's what it looks like and we would ask that the
12 committee accept this as an exhibit and I will pass the
13 witness to Mr. Rochelle.

14

15 - - -

16

17 CROSS EXAMINATION BY MR. ROCHELLE:

18 Q I'm Bob Rochelle. I represent Senator Kurita
19 with Mr. Thompson here.

20 We wanted to check out your affidavit and
21 have some idea as to how to find these folks and talk
22 to them but did you include in your affidavit what
23 their names were?

24 A No, sir. I do not recall getting their
25 names.

1 Q You see, that makes it kind of hard for us.
2 We're wanting to interview them and to see if maybe
3 they said something different.

4 But you look familiar. Have you had a You
5 Tube presentation that you were on?

6 A No, sir, I have not.

7 Q Have you got a Facebook?

8 A Yes, sir, I do.

9 Q Were you the one with the golf club?

10 A No, sir. My golf clubs are in Morristown,
11 Tennessee.

12 Q Were you the one that was on there with the
13 picture of Senator Kurita?

14 A No, sir, I was not.

15 Q Who was that?

16 A That was a friend of mine.

17 Q Did you produce it, manage it?

18 A No, sir, I did not.

19 Q Wasn't you?

20 A No, sir, it was not.

21 Q Were you there when it was made?

22 A No, sir, I was not.

23 Q Alright. Take your word on that. You've
24 seen it, you know that it was a very frightening
25 exhibition?

1 A I wouldn't call it frightening.

2 Q It contained violence.

3 A Well, I wouldn't say it contained violence.

4 Q What was being used to strike Senator Kurita
5 with, what was being used, golf club?

6 A From what I remember, yes, sir. I've seen
7 the video.

8 Q A golf club and a -- continuously struck a
9 picture of Senator Kurita basically using a -- I don't
10 want to imitate the voice, but a frightening voice,
11 "Kill" --

12 A No, sir.

13 Q -- "Senator Kurita."

14 A No, sir. That -- the word "kill" was not in
15 that video.

16 Q Then continuously taking the golf club and
17 beating it against the image of Senator Kurita.

18 A Yes, sir.

19 Q That was your friend.

20 A Yes, sir. He was an acquaintance of mine,
21 yes.

22 MR. ROCHELLE: That's all. Thank you.

23 CHAIRMAN SASSER: Anybody on the Committee
24 have any questions?

25 MR. JOHNSTON: We have no redirect.

1 CHAIRMAN SASSER: Anybody on the Committee
2 have any questions Thank you, Mr. Haynes.

3 MR. JOHNSTON: Thank you, Mr. Haynes. David
4 Luciano. I'm sorry. The affidavit of Mr. Luciano is
5 included in the supplemental filing that we submitted.

6
7 - - -

8
9 DAVID LUCIANO,

10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. JOHNSTON:

12 Q You're your David Luciano?

13 A That's correct.

14 Q Mr. Luciano, would you tell the panel here
15 just a little bit about yourself, where you're from and
16 what you do, that sort of thing?

17 A David, or DJ is fine with me. There's a lot
18 of Misters in here. I'm not into formalities.

19 But I live in Clarksville, Tennessee. I'm a
20 student at Austin Peay State University, former
21 President of the College Democrats and I deliver pizzas
22 for Papa John's. So if you guys are hungry later.

23 Q Mr. Luciano, did you call sometime in July at
24 the Montgomery County Republican Party headquarters?

25 A That's correct.

1 Q And what did you do that for, sir?

2 A I had heard in passing with the conversation
3 with Adam about his experience at the Montgomery County
4 headquarters and so I decided to check myself and I
5 called and the lady that answered the phone informed me
6 she was the President of the Montgomery County
7 Republican Party and at that time I told her that I was
8 new to Clarksville and I was looking to try to find
9 some places.

10 She gave me the directions to the party
11 headquarters and then she told me about different races
12 that were going on and she told me -- I gave her my
13 address.

14 She told me I was -- I was in Marsha
15 Blackburn's District but she was safe from her contest
16 and that if I wanted to muddy up the waters, a lot of
17 other Republicans were doing the same in voting in the
18 Democratic primary for Senator Kurita because the
19 Democratic Party was livid of her vote on ousting
20 Wilder.

21 MR. ROCHELLE: If I might object, this is
22 another example here. This man has gone way beyond the
23 affidavit that he filed and, again, those type of
24 matters are supposed to be included in the original
25 contest.

1 Again, we've got an affidavit talking about
2 somebody who is not named in the affidavit where we
3 could go and interview them, and so at some point, I
4 think you're going to have to put some limits on just
5 how much wavering from the affidavit can be done.

6 A SPEAKER: Have a copy of the affidavit you
7 can put on the screen, please?

8 MR. JOHNSTON: I do.

9 MR. JOHNSTON: Can you see the affidavit and
10 read it from here, Mr -- I've got an extra copy. Let
11 me just hand this to you.

12 CHAIRMAN SASSER: Thank you Mr. Rochelle.

13 Mr. Johnston, if we can keep the testimony as
14 close as possible to the affidavit and, again, Mr.
15 Rochelle, one of the things we're trying to do here,
16 have as complete a record as possible.

17 I would encourage if there's issues like this
18 to please address them on cross examination. You'll do
19 a very effective job on that.

20 MR. ROCHELLE: Again, I'm trying to reserve
21 an objection on things. You would rather me not do it
22 that way and do it when I do cross examination, I'll be
23 glad to.

24 MR. JOHNSTON: I would just point out, too, I
25 think the officers of the Republican Party in

1 Montgomery County are listed on their website. Could
2 easily have been found by anybody.

3 BY MR. JOHNSTON:

4 Q Mr. Luciano, is that a true and exact copy of
5 the affidavit that you submitted on behalf of
6 Mr. Barnes?

7 A That is correct.

8 MR. JOHNSTON: We would ask the committee to
9 accept this affidavit as the next numbered exhibit. I
10 pass the witness.

11

12 - - -

13

14 CROSS EXAMINATION BY MR. ROCHELLE:

15 Q David, I'm Bob Rochelle. When you called,
16 were you involved in the Barnes campaign?

17 A I was working as a volunteer, yes, sir.

18 Q How about the other fella, David that was or
19 Adam that was just here, was he involved?

20 A He was a volunteer, as well.

21 Q So did y'all come up with this thing, let's
22 call the Republican Party and see if we can get some
23 information out of what they're planning to do?

24 A I don't know what Adam was thinking of. He
25 was just up here. For me it was concerning to me as a

1 Democratic that the Republican Party was trying to
2 influence our race, our primary, and I wanted to
3 checkup on that myself.

4 Q And that was well-known in the Barnes
5 campaign, that there needed to be --

6 A I don't know what was well-known from other
7 people aside from myself.

8 Q In your affidavit you didn't name anybody.
9 You said you called and somebody said they were an
10 officer.

11 A She informed me she was the officer.

12 Q And she told you because Marsha Blackburn had
13 it easy or had --

14 A She said she had it safe.

15 Q You live in Marsha Blackburn's district?

16 A I assume I do. I live in Clarksville. I
17 mean I've never voted for her.

18 Q Marsha Blackburn was the one that had the
19 opponent.

20 A Right. But I believe she handed the race to
21 him pretty easily. I don't think that's what she was
22 referring to.

23 Q So you're saying that the people you talked
24 to were telling you Marsha Blackburn is going to win
25 and that the people in her base of support didn't need

1 to go out and vote for her, they could go vote
2 somewhere else.

3 A I just know what the lady told me on the
4 phone is that she was safe.

5 MR. ROCHELLE: On that pizza, you check back
6 in here about 11:30, okay?

7 CHAIRMAN SASSER: Anybody on the Committee
8 have any questions?

9 MR. OWEN: I just move that we accept the
10 affidavit as is and nothing else, just as Senator
11 Rochelle suggested.

12 CHAIRMAN SASSER: Can we get a second on Mr.
13 Owen's motion?

14 A SPEAKER: Second.

15 CHAIRMAN SASSER: All in favor? Aye.

16 All opposed? Motion carries. Any redirect?

17 MR. JOHNSTON: No redirect.

18 CHAIRMAN SASSER: Thanks.

19 MR. JOHNSTON: The next item we have is an
20 affidavit from Ms. Alma Lewis which I will place on the
21 screen and read and ask that the committee accept the
22 affidavit.

23 "AFFIDAVIT OF ALMA L. LEWIS. I, Alma L.
24 Lewis, a resident of 4135 Lem Davis Road, Cunningham,
25 Tennessee, 37042 would state as follows: On the

1 morning of August the 7th, 2008 at about 6:30 a.m., I
2 received a telephone call at my home from a woman
3 stating that she was with the Republican Party. She
4 asked me if I was going to vote for Tim Barnes. I said
5 yes. She told me that Tim Barnes was a Republican and
6 that the Leaf Chronicle had gotten it right when they
7 printed that he was. She said the follow-up article
8 was wrong when it printed he was a Democrat. She told
9 me if I wanted to vote for Tim Barnes, I would have to
10 vote Republican and write in Tim Barnes. My husband
11 and I discussed it and we were so confused by all of
12 this that we decided we would just vote for Rosalind
13 Kurita because we wanted to vote Democrat. We would
14 have voted for Tim Barnes if there hadn't been all this
15 confusion about whether he was a Democrat or not.
16 FURTHER THE AFFIANT SAITH NOT." Alma L. Lewis. Sworn
17 to and subscribed before me this the 26th day of
18 August, Elizabeth Klein, Notary Public.

19 I ask that the Committee accept the affidavit
20 of Alma Lewis.

21 CHAIRMAN SASSER: Accepted, Mr. Rochelle?

22 MR. ROCHELLE: If I can just comment on these
23 affidavits since we don't have them here for cross
24 examination.

25 First of all, I didn't see Alma Lewis on your

1 witness list. We made a deal, we wouldn't call anybody
2 or use anything unless we gave notice but I didn't see
3 Alma Lewis listed anywhere so understand we're taken by
4 surprise.

5 But if you'll look at this affidavit, again,
6 who was it she's talking to? Don't know. It says
7 because somebody called her on the phone that they got
8 so confused they decided they would just vote for
9 Rosalind Kurita.

10 Now, I really don't want to object to them
11 introducing the affidavit but I think you have to give
12 it the weight that it's worth and that's not much.

13 MR. PHILLIPS: For the benefit of the
14 committees and the members present, I also want to make
15 clear what the rules were of the parties, that the
16 parties agreed to.

17 The parties agreed that all affidavits and
18 other evidence with the exception of voter history
19 information would be submitted to the Primary Board by
20 12 noon on Thursday, September the 11th.

21 The affidavit that just was read into the
22 record fell within that dead line. I just want to make
23 everyone aware of kind of what the evidentiary
24 deadlines were on the parties in terms of submitting
25 documents to this body.

1 CHAIRMAN SASSER: Mr. Barrett.

2 MR. BARRETT: I have great difficulty with
3 these. Judge Collier in Chattanooga one time told me,
4 "Mr. Barrett, we're tired of looking at your hand,
5 we'll believe the document."

6 I placed on there an affidavit by Jesus
7 Quiles, which is addressed in Paragraph 6 of the
8 contest of election, in which he attempted to vote at
9 Sango Elementary School shortly before the close of the
10 polls and there's an exchange between he and the
11 election officers.

12 It's also directed to the interview of Vickie
13 Koelman, K-O-E-L-M-A-N, the Election Coordinator of
14 Montgomery County. That transcript hasn't been filed I
15 believe by Mr. Rochelle? Has the transcript been
16 filed?

17 MR. ROCHELLE: I think it needs to be filed.
18 Can we just agree to file the transcript --

19 MR. BARRETT: I agree.

20 MR. ROCHELLE: -- our interviews with the
21 election workers?

22 MR. BARRETT: Yes, I agree with that. I'll
23 read this, Mr. Quiles, he's unavailable.

24 CHAIRMAN SASSER: You might want to stand
25 closer to the microphone.

1 MR. BARRETT: I'm sorry. I can't read it up
2 there. My eyesight is not good.

3 MR. ROCHELLE: Here, George.

4 MR. BARRETT: I'll give it back to you. "I
5 Jesus Quiles state as follows: That on Thursday,
6 August 7th, 2008, I went to vote for Tim Barnes in the
7 primary election. I went to Sango Elementary thinking
8 that was where I was supposed to go. I got there
9 around 6:30, 6:45 and told I was not supposed to vote
10 at Sango Elementary but at Rossview. By the time I
11 would have gone over to Rossview, the polls would have
12 been closed so I was not able to vote. No one told me
13 I had any option about that, they just told me I
14 couldn't vote."

15 We would like to move that in.

16 MR. PHILLIPS: Before you do that, Senator
17 Rochelle, let me just make clear, too, this may
18 streamline the process today, as the parties agree, all
19 documents with the exception of the voter histories
20 that were filed prior to noon on Thursday are going to
21 be accepted into the record automatically.

22 MR. BARRETT: We agreed.

23 MR. ROCHELLE: We agree, it's all accepted
24 in. We can comment on them and object to parts of it
25 if we wish.

1 MR. PHILLIPS: Absolutely. In terms of
2 making motions about whether things need to be admitted
3 and things like that as you would do in Court on a
4 piecemeal, that is unnecessary as far as this body is
5 concerned.

6 MR. ROCHELLE: Okay. My question is, George
7 got to file his own case but we have the comments from
8 the election officials in regard to Mr. Quiles'
9 affidavit.

10 Would you like to hear that now? It's in the
11 argument we presented or the written argument that you
12 have. Would you like to have this read now so that you
13 hear all the information about Mr. Quiles at one time?

14 CHAIRMAN SASSER: I think it probably be more
15 appropriate if you do that as part of your own case.

16 MR. ROCHELLE: We'll do it anyway you wish.

17 CHAIRMAN SASSER: Let's let Mr. Barnes
18 present his case and then we'll let you present Senator
19 Kurita's.

20 MR. ROCHELLE: Please note that this
21 affidavit doesn't say where this fella lives and that
22 gets important as to whether or not he was -- what
23 might qualify as a failsafe voter or provisional voter
24 or whatever, and we were trying to find out what spurs
25 that requirement and what spurs it is that you moved to

1 a different district, moved within your precinct, some
2 issue like that. That's what allows the Election
3 Commission folks to make a determination.

4 I think it's going to be suggested that he
5 didn't get to vote and somehow or another the election
6 folks did something wrong in this. In this affidavit
7 here he doesn't say anything about where he lived,
8 whether he changed his address.

9 In fact, I think you're going to find that he
10 lived within the district the last time the Election
11 Commission heard from him and he would not have
12 qualified for a failsafe vote or provisional vote.

13 So, just note that's the key thing here. He
14 doesn't say he's moved. He doesn't even say where he
15 lives now so we could go in and investigate whether or
16 not he might have been entitled to a provisional vote.

17 MR. BARRETT: The next paragraphs are
18 Paragraphs 7 to 11. Two of our witnesses are not here
19 yet. They will be here. They should be here by 11 or
20 so.

21 I'm going to skip over to Paragraph 13 of the
22 contested election, and I call counsel Peter
23 Napolitano.

24

25

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1 PETER NAPOLITANO,

2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARRETT:

4 Q Mr. Napolitano, would you state your
5 profession, please, sir?

6 A I've been an attorney for 27 years.

7 Q And where do you practice?

8 A I practice in Clarksville.

9 Q And you live there, of course.

10 A Yes, sir, I do.

11 Q You're a resident voter.

12 A Yes, I am.

13 Q Did you vote in the August 7th primary?

14 A Yes, I did.

15 Q Which precinct did you vote?

16 A I voted at the Saint Bethlehem Methodist
17 Church, which is where I also attend church.

18 Q How did you come to give an affidavit in this
19 case which is attached to the -- under Paragraph 13 to
20 the contest for election?

21 A Well, the day after the election, I had heard
22 on the news and read in our local newspaper that
23 Mr. Barnes had lost by a narrow margin of what, 19
24 votes, 18, 19 votes, and there was some content of the
25 TV news article and the newspaper to the effect of

1 voter confusion and things like that, and I was
2 immediately struck by that based on my own experience
3 at the polling place, and I contacted Mr. Barnes.

4 It was on a Saturday and I didn't expect to
5 find him at his office but I called and left a message,
6 nevertheless, and then I called him back again on
7 Monday.

8 So I initiated the contact to share my
9 experience at the polling place to see if it was
10 relevant to his narrow defeat.

11 Q Go ahead, tell us what happened.

12 A Well, I went there and I went to the first
13 table. They've got it broken down by alphabet and I
14 went to the first lady at the table there and she asked
15 me to produce my voter registration card. She asked me
16 to fill out this oh, I guess about a 6 X 5 piece of
17 paper on which I was to declare a party.

18 I announced to her that I did not have any
19 party affiliation any longer; that I would vote in all
20 subsequent elections and that day for who I felt was
21 the best candidate for the position.

22 She said, "Well, you have to declare a
23 party." I said, "I do not have a party and I am here
24 to vote for Mr. Barnes." She said, "Well, you can't do
25 that until you declare a party." I said, "I'll tell

1 you a third time I don't have a party affiliation and
2 I'm not going to declare one."

3 She said, "Well, what was" -- "in prior
4 election, what was your party affiliation?" And I
5 thought back to the last Presidential election and my
6 error in judgment in voting Republican, and I said,
7 "Well, I voted Republican." She said, "Well, alright,
8 check off Republican box."

9 I did. I signed that form and she instructed
10 me to go over to the registry line. I went over to
11 that table and signed the log and I was asked again to
12 check off Democrat or Republican and to be consistent
13 with the first sheet, I checked off Republican, signed
14 it and then I was given a little ticket and I went on
15 to the voting machine.

16 A gentleman inserted a key in the machine and
17 I proceeded to vote. I went through 8 or 9 screens and
18 at the end when it asked -- the yellow light came on
19 the machine, asking me to confirm all my selections,
20 and at that point, I realized I did not see Mr. Barnes
21 or Ms. Kurita's names on any of those screens.

22 So I backed paged it. I went all the way
23 back to the beginning and I carefully looked at each
24 screen and ended up the same way, no Kurita, no Barnes.

25 I called for assistance of the gentleman who

1 had put the key in the machine. Told him the problem.

2 I said, "I'm here to vote for Mr. Barnes. There's no
3 opportunity for me to vote on any of these screens."

4 He said, "Well, it's too late to do anything
5 now, you've already reached the end of the line with
6 the machine and all you can do now is press that
7 button." I said, "No, I'm not pressing that button and
8 I want to see somebody else if that's all you can tell
9 me."

10 By the end -- about a half hour, there were
11 four people including a supervisor, all of whom were in
12 disagreement as to whether they could reset the machine
13 because I had not pressed that confirmation button.

14 And finally a supervisor was called and she
15 brought a three ring looseleaf binder I guess with some
16 rules and regulations for this. She found the exact
17 section applicable to my problem and she stated to the
18 other three election employees, Election Commission
19 employees that yes, we can reset the machine but he's
20 going to first have to go back and start over again and
21 sign a new declaration paper declaring he's a Democrat.

22 Even with that supervisor saying that, there
23 was a woman there among the four employees who
24 disagreed with her and said no, you can't do that.

25 Well, the supervisor called the final shot

1 and I was sent back to the first table. We did it, we
2 destroyed the other paper. I don't remember if we
3 destroyed the paper or I crossed out Republican and
4 checked off Democrat and initialed it.

5 I know I did that on the registration line.
6 I had to go back to the second table, cross out
7 Republican, check Democrat and initial my changes.
8 That was counter-initialed by the supervisor.

9 I then went back to the machine and they
10 rekeyed it and lo and behold I had my choice of voting
11 for Mr. Barnes or Ms. Kurita, and I did. And so I was
12 not disenfranchised.

13 My point was, I'm a retired police sergeant
14 from New York. I've been an attorney 27 years. I
15 stood up for myself with these people.

16 Four people didn't know what to tell me, what
17 -- you know, you have two people disagreeing with the
18 supervisor. You had people that didn't know what to
19 do. I specifically went there saying, "I don't have a
20 party affiliation, I'm here to vote for Mr. Barnes."

21 And I end up with no opportunity to vote for
22 him. I did not assert myself as I am known to do from
23 time to time. I would have just simply accepted the
24 decision of the first, second and third Election
25 Commission employees and just walked out of the church

1 and, you know, not having been able to vote for
2 Mr. Barnes.

3 I thought, I'm not an average person who is
4 just going to accept the authority from somebody there
5 without challenge or with challenge. And I couldn't
6 help but wonder how many people not as assertive as
7 myself experienced the same thing?

8 Q Mr. Napolitano, have you ever had that happen
9 in a previous election?

10 A No, I haven't.

11 MR. BARRETT: You may ask him.

12 THE WITNESS: I can't help but wonder what
13 all the chuckling is about from that group of ladies
14 back there? They find my testimony amusing?

15 CHAIRMAN SASSER: I'll remind everybody that
16 who is here as our guest, we are trying to be
17 respectful of everybody who is up here participating.

18 I'd ask the same respect for my guests as for
19 the all members. Thank you so much.

20

21 - - -

22

23 CROSS EXAMINATION BY MR. THOMPSON:

24 Q Hello, Mr. Napolitano. My name is Price
25 Thompson. I represent Senator Kurita along with Mr.

1 Rochelle.

2 A Good to meet.

3 Q Appreciate you coming here today and am I
4 getting your name right, Napolitano?

5 A That's very good. I've been practicing at it
6 for 59 years now and I still mess it up.

7 Q That's great. Well, I first want to say that
8 would you be surprised to hear that there's going to be
9 testimony from an official at the Saint Bethlehem
10 polling location that will testify by transcript that
11 there was no one objecting to you changing your vote or
12 changing your primary at anytime after you had gone
13 into the voting booth?

14 A Nothing would surprise me. I would imagine
15 if that's the case, then none of those people would
16 want to be known to have gotten it wrong and been part
17 of that conflict.

18 Q Let me ask you one more question. I heard
19 your righteous indignation on several occasions this
20 morning where you said, "I was there to vote for Tim
21 Barnes."

22 A Correct.

23 Q You said that about four, five times; is that
24 correct?

25 A No. I said it twice. I said it when I first

1 entered the church, went up to the first table and I
2 was asked to declare a party. I said, "I don't have a
3 party affiliation at this point. I'm hear to vote for
4 Mr. Barnes. I end up checking off Republican and
5 there's no opportunity to vote for Mr. Barnes."

6 I then said it to the -- a second time to the
7 gentleman who was responsible for my voting machine
8 when I said, "I can't find Mr. Barnes on the screens."
9 He said, "That's because you checked off Republican on
10 the program. This is the primary and you have to vote
11 Democrat."

12 I said, "Well, I don't want to" -- "I want to
13 vote for Mr. Barnes." That was the second or third
14 time and that was the end of it.

15 Q That was an important thing that you told him
16 that day, the candidate you wanted to vote for would
17 help you guide him to the right primary, correct?

18 A I would hope so. That's not what happened.

19 Q If you would just show me in the affidavit
20 where you told the election officials there at the
21 polling location that you were there to vote for
22 Mr. Barnes. I'd appreciate you showing me that
23 language.

24 A Okay. I confess I can't see that. It's kind
25 of blurry. Okay. Good.

1 Q I believe Mr. Barrett handed you a copy of
2 your affidavit. If you would show me where you told
3 the election officials that you were there to vote for
4 Mr. Barnes.

5 Can't find it, can you?

6 A I'll take your word for it, without
7 belaboring these proceedings. That doesn't mean I
8 didn't say it.

9 Q It's pretty important thing, isn't it? You
10 said it five times here today. Why didn't you say it
11 in your affidavit?

12 A I'm testifying under oath today.

13 A SPEAKER: It's in there.

14 MR. THOMPSON: You can point out where it
15 says, "I'm here to vote for Mr. Barnes."

16 A SPEAKER: Says right here.

17 THE WITNESS: Where is it?

18 A SPEAKER: Paragraph 5.

19 THE WITNESS: Yeah, Paragraph 5. It says it
20 right there. "I advised two people who responded that
21 I was unable to find the screen with Mr. Barnes' name
22 and my intent to vote from him."

23 Q You told them that at the voting machine.
24 You said here you told the people when you walked in
25 the polling location, "I'm here to vote for

1 Mr. Barnes."

2 You didn't put that in your affidavit. If
3 that's something important, you should have. That's
4 all the questions I have.

5 CHAIRMAN SASSER: If there's no objection
6 from Mr. Barrett -- I'm sorry, any questions from the
7 Committee? Thank you.

8 Any redirect, you guys?

9 MR. BARRETT: No.

10 CHAIRMAN SASSER: Without objection from Mr.
11 Barrett or Mr. Rochelle, I'd like to let us have a ten
12 minute break. I caution everybody on the Executive
13 Committee and on the Special Committee do not discuss
14 this matter among yourselves.

15 The Sunshine Laws apply to us. All
16 deliberations should be done in public and in this
17 room. Thank you.

18 (10:45 a.m., a recess was had until 11:00 a.m.)

19 CHAIRMAN SASSER: Mr. Barrett.

20 MR. BARRETT: How much time do we have?

21 A SPEAKER: You've got -- you used 19.

22 MR. BARRETT: I looked for this lady at the
23 recess and I didn't see her. Let me see if she's here.
24 I looked for Ms. Debra Jones.

25 Is she here? Would you come forward,

1 Ms. Jones, please, ma'am?

2 Paragraph 15 of the Contest of Election --
3 before I question Ms. Jones, I'd like to direct your
4 attention to the interview of the machine operator at
5 the precinct at Outlaw Field where Ms. Jones voted and
6 that would be beginning on Page 83 of the transcript.

7 I don't believe you have that before you.
8 That was the machine operator that Montgomery County
9 Election Commission made available for interviews by
10 Mr. Rochelle and us on Tuesday and that transcript was
11 completed yesterday and we've had an opportunity to
12 examine it.

13 This witness is going to testify as to her
14 experience when she attempted to vote at Outlaw Field
15 in Montgomery County and it's somewhat contrary to the
16 testimony given by the machine operator. The machine
17 operator beginning on Page 84 and particularly 87, says
18 that she called tech, technical information at the
19 Election Commission because she was having trouble --

20 CHAIRMAN SASSER: Mr. Barrett, just to be
21 clear, the testimony you're talking about now in the
22 transcript, we don't have that in front of us here at
23 the Committee.

24 If you could provide maybe a little more
25 context.

1 MR. BARRETT: I'm trying to. This is the
2 testimony of the witnesses not under oath -- not under
3 oath, that the Montgomery County Election Commission
4 made available on Tuesday for us to interview.

5 Obviously what they did was go down our
6 Complaint and when we mentioned a particular precinct,
7 they interviewed the election officers, the various
8 election officials and made some of those available for
9 us to interview on Tuesday.

10 Mr. Rochelle and I, we both were invited.
11 There was a transcript made of that. Counsel for the
12 Montgomery County Election Commission was present at
13 the interview as was Mr. Phillips, and there's a record
14 made of that.

15 As I say, these people did not testify under
16 oath. This machine operator, Ms. Landry and her
17 husband, both young people, married and both worked as
18 machine operators at what's called Outlaw Field in
19 Montgomery County. They admitted that they were having
20 trouble with the machine making it come up with the
21 primary that the person wished to vote in.

22 Ms. Landry says -- she testified she talked
23 to the Special Clerk which is one in each precinct
24 supposed to be troubleshooting. Beginning on Page --

25 MR. ROCHELLE: Mr. Chairman, this is what I

1 was getting at earlier. If that's not in the record
2 yet, the best evidence of what was said of these
3 interviews which Mr. Barrett and I and Mr. Phillips all
4 agreed would be filed and considered as evidence.

5 We keep hearing about unsworn. It's all
6 filed and considered for evidence. I think we now need
7 to jointly file that transcript so that it's available
8 to you. I would ask Mr. Barrett if we can jointly do
9 it.

10 CHAIRMAN SASSER: We can make that obviously
11 part of the record. These proceedings -- the reason I
12 was asking Mr. Barrett to give some context to us to
13 simply those of us sitting up here today do not have a
14 copy of that transcript.

15 MR. ROCHELLE: I think we referred to it on
16 Page 17 of our argument that I think that was filed
17 last night.

18 CHAIRMAN SASSER: That would be Page 17 of
19 the response of Senator Rosalind Kurita to contest the
20 election?

21 MR. ROCHELLE: Reply argument.

22 MR. BARRETT: It's on Page 17. It says the
23 testimony of Aspen Landry and he starts out and says --
24 this is Mr. Rochelle speaking to Ms. Landry, Page 17 of
25 Mr. Rochelle's filing of last night which is styled --

1 which is styled, "Reply Filed on Behalf of Senator
2 Rosalind Kurita."

3 Page 17, it says -- it begins, "You say you
4 read the affidavit of Ms. Jones and you think you know
5 what she's referring to." Ms. Landry, Affirmative.

6 Then she goes into a long information of how
7 the machines worked. And she says she spoke to the
8 Special Clerk and the Special Clerk gave her the phone
9 number for tech. She explained that's the technician
10 at the Election Commission that responded to inquiries
11 about that.

12 "The tech explained to me", and she goes on
13 to say what he explained. Now, the third time -- she
14 talks about the two previous times she put the key in
15 to release the primary. On the third time, I put it in
16 and got frustrated because it finally gave -- didn't
17 give me the choice. This is right before I had talked
18 to Special Clerk and I called the tech. I told my
19 husband, I said, Tom, who is the other one working,
20 this is the third time this is happened? It didn't
21 give me a check. I say put it up, let's go talk to
22 somebody.

23 She said well, this woman was standing there
24 and she didn't know what was going on. Maybe that was
25 the Debra because this is the one I finally vocalized

1 it to someone else. Tom said she doesn't have to wait,
2 my machine is open, she can come over and she can use
3 my machine while you figure this out, and I said, well,
4 let me at least look at the machine and see and it has
5 to be the right one. So she used it. I mean it was
6 correct. Everyone that used my machine voted for the
7 party they wanted to vote for. But there was some
8 confusion on that because my card, I don't understand
9 that you can put it so it quickly, removed it right
10 way. You have to give it a minute but everyone voted
11 for the party they voted -- that they wanted to vote
12 for.

13 I'm going to offer Ms. Jones' affidavit, put
14 it up on the screen and ask her to look at it and read
15 it.

16
17 - - -
18

19 DEBRA JONES,

20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BARRETT:

22 Q Would you state your name for the record,
23 please, ma'am?

24 A Debra Jones.
25

1 Q Where do you live, Ms. Jones?

2 A I live in Clarksville, Tennessee at 1007
3 Garfield Way.

4 Q And do you vote in Clarksville?

5 A Yes, I do.

6 Q Did you vote in the August the 7th primary?

7 A Yes, I did.

8 Q Where do you vote?

9 A Outlaw Field.

10 Q That's a voting precinct?

11 A Yes, it is.

12 Q Approximately what time did you go to vote?

13 A It was between 8 and 9. I had a doctor's
14 appointment. I don't remember the exact time.

15 Q And would you explain to the Commission what
16 happened when you went in to vote?

17 A When I went in to vote I went to the first
18 table where they check your identification and your
19 voting card. They asked me to declare a party. I
20 declared myself Democrat.

21 I then went to the next section where it's
22 alphabetized. I filled out the information card and
23 again they marked in the back that I was Democrat and I
24 signed the book. They gave me the card and I proceeded
25 to the voting machine.

1 Q Yes, ma'am.

2 A Whenever she went to put the key in the
3 machine after several tries she came back to me and
4 said, "I can't get it to come up Democrat." She said,
5 "It's not going to make a difference, is it?"

6 I said, "Well, my candidate is Democrat, the
7 person I want to vote for is Democrat" and she said,
8 "Well, all the candidates are on there, it's just it's
9 going to say Republican."

10 So I went ahead, I went through the voting
11 machine and --

12 Q The various screens.

13 A Each screen. Cast my vote. Did not see
14 Senator Kurita or Tim Barnes on the ballot. I went
15 ahead and confirmed my vote because I really didn't
16 know what to do. My husband was there with me. He was
17 actually on the other machine. So her offering me the
18 other machine wasn't possible because he was voting at
19 the same time.

20 As I left, went out with my husband, I said,
21 "I don't know what to do, I wasn't able to vote for the
22 person that I wanted to vote for." He said, "Well, I'm
23 not sure. We couldn't tell, either."

24 The way I came in contact with Mr. Barnes,
25 they had actually called my husband at the house to

1 speak to him and he had told them that I had had an
2 incident that had occurred while I tried to vote.

3 Q And did you subsequently give an affidavit?

4 A Yes, I did.

5 Q That was attached to the Contest of Election.
6 Would you read it, please, ma'am?

7 A "I, Debra Jones, resident of 1007 Garfield
8 Way Clarksville, Tennessee would state as follows: I
9 voted on election day at my regular voting precinct at
10 Outlaw Field Airport. I declared Democrat and when I
11 got to the voting machine the woman working the machine
12 said she could not get Democrat to come up and that I
13 would have to vote Republican. Consequently, although
14 it were my intention to vote for Tim Barnes, Tim
15 Barnes' name did not come up on the machine and I was
16 unable to vote for him. Further the "--

17 Q Further the affiant saith not.

18 A I have vision, too.

19 CHAIRMAN SASSER: I can never pronounce that
20 word, either.

21 Q Affiant saith not. That's sworn to.

22 Now, do you remember what the young lady who
23 was operating the machine looked like?

24 A She was a young woman, blond, thin,
25 approximately I would say between 18 and 25 years old.

1 Q And was there also a young man, machine
2 operator?

3 A Yes, there was.

4 MR. BARRETT: You may ask.
5

6 - - -
7

8 CROSS EXAMINATION BY MR. ROCHELLE:

9 Q Thank you. Ms. Jones, I'm Bob Rochelle. I
10 represent Senator Kurita.

11 I guess I have to ask you the obvious
12 question. When you were there and you heard them
13 saying there was something the matter with the machine,
14 is it -- well, is it possible that, in fact, the lady
15 said this machine is not working right and you heard
16 that?

17 A Uh-huh.

18 Q But Mr. Barrett told you she has testified
19 that in the three instances where it occurred where she
20 was pulling the clicker out too fast, that it would
21 come up, a primary would come up and in each of those
22 three instances the primary matched the place to vote
23 and her husband then testified and verified that as to
24 the last one which they think was you, that, in fact,
25 it was the Democratic Party.

1 Now, in your affidavit, you don't say
2 anything about asking to see somebody else like Lawyer
3 Napolitano did, seeing somebody, I don't want to vote
4 Republican, I want to vote for Tim Barnes.

5 Did you say anything?

6 A No. I had just told her that my candidate
7 was Democratic. When she said it only comes up
8 Republican, I told her again, I said, "Well, my
9 candidate who I want to vote for", which was Tim
10 Barnes -- "is Democratic."

11 Q Okay. And you didn't make a complaint to the
12 election folks that day. When was it that Mr. Barnes'
13 campaign called you and asked you if you had any
14 problems at voting?

15 A I couldn't tell you the exact date.

16 Q Well, was it two days later, ten days later?

17 A A couple of days prior to me making the
18 affidavit. So this was on the 25th of August.

19 Q Okay. So about the 22nd, 23rd, 24th of
20 August.

21 A Yes.

22 Q When was the election, August the 7th?

23 MR. BARRETT: Yeah.

24 Q That's when you had to go back and remember
25 what happened.

1 A Yes.

2 Q Voting places can be somewhat intimidating.
3 I take it there's a bunch of folks there and you have
4 to be filling out this form and signing over here.

5 Is it possible these two young folks who were
6 the machine operators are telling the truth?

7 A No.

8 Q It's not. You don't think there's anyway --

9 A I think my husband could even reaffirm when I
10 spoke to him the day of the election that this was what
11 I had relayed to him as well.

12 Q I'm not saying that you didn't hear her say
13 this machine is not operating. She says I said that.

14 A Right.

15 Q But then she describes the action that she
16 took to make sure that you got to vote as a Democrat.

17 A I think my vote should reflect that. I don't
18 know if there's a way to pull it by my name.

19 Q No, ma'am. Your application --

20 A I asked my husband when we got back to the
21 car, I said -- because he actually voted Republican.

22 Q I can't ask you too much outside your
23 affidavit there.

24 A Okay.

25 Q What I'm saying to you is, 10, 15 days after

1 the election is when you first had to recount this to
2 put it into the affidavit; is that correct?

3 A That's correct.

4 Q I guess we just have a difference in the
5 memories of the three witnesses then. So, we thank you
6 for coming today and helping giving us an idea of what
7 you think. Thank you.

8 A Thank you.

9 MR. BARRETT: Mr. Barrett, redirect? Wait,
10 one second, Ms. Jones. Any questions from the
11 Committee?

12 MR. OWENS: Thank you, Mr. Chairman, Members.

13 Ms. Jones, on Page 19 of this, I guess you
14 don't have that but in the statement from the Election
15 Commission workers, I guess she's responding to a
16 question from Senator Rochelle and that starts in the
17 middle of the page where it says, "So if Debra
18 Jones" -- let's see. The question starts out, "So
19 these three instances where you pulled the card out --

20 A Yes.

21 Q -- all three of them, whichever primary
22 popped up, it was the primary that was on the
23 application to vote?

24 A Yes, or exactly.

25 Q So if Debra Jones was one of those three, she

1 would have heard you say something like, 'This machine
2 is not working or something like that'.

3 A That's correct. And we had several people
4 complain because they didn't see the person on their
5 ballot that they wanted. And we had to explain to them
6 that this is a primary and they were only going to see
7 the Republican nominee or the Democrat, you know, so
8 lots of them didn't understand that that's what they
9 were coming to vote for. So maybe she was confused on
10 that. She heard me say that the machine wasn't working
11 properly and she didn't see the names so perhaps she
12 got confused. I don't know."

13 So, Ms. Jones, you asked, according to your
14 affidavit, you asked to vote in the Democratic primary.

15 THE WITNESS: Correct.

16 MR. OWEN: Were you allowed to vote in the
17 Democratic primary?

18 THE WITNESS: No, I was not. It was a
19 Republican ballot that came up.

20 MR. OWEN: And were you confused?

21 THE WITNESS: No, I wasn't.

22 MR. OWEN: Okay. Thank you very much.

23 THE WITNESS: You're welcome.

24 CHAIRMAN SASSER: Anybody else have any
25 questions? Thanks so much for your time, Ms. Jones.

1 MR. BARRETT: Thank you Ms. Jones. Thank you
2 for coming. We want to call Mr. Davis.

3
4 - - -

5
6 JAMES THOMAS DAVIS,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. BARRETT:

9 Q This is directed at Paragraphs 18, 19 and 20.
10 There were three affidavits, Tamala Lavender, Walter
11 Lavender and Stanley Aldridge and the -- all four
12 affidavits, and Mr. Davis who is here in person.

13 Mr. Davis, would you state your name please,
14 sir?

15 A James Thomas Davis.

16 Q And where do you live, Mr. Davis?

17 A I live in Cheatham County, Chapmansboro,
18 Tennessee.

19 Q Where do you vote?

20 A I vote at West Cheatham High School.

21 Q And were you working on election day at a
22 precinct?

23 A Yes, sir.

24 Q Which one was it?

25 A The Harpeth High School.

1 Q Is that in Cheatham County?

2 A Cheatham County, 6th District.

3 Q You had already voted that day at your
4 precinct; is that correct?

5 A Right. I vote in West Cheatham.

6 Q And you gave us an affidavit, didn't you,
7 Mr. Davis?

8 A Yes, sir, I sure did.

9 Q Have you had an opportunity to read that
10 affidavit?

11 A Yes, sir.

12 Q Mr. Davis --

13 A I got something wrong with my hearing, I
14 guess.

15 Q You told us that earlier. I hope you can
16 hear me alright.

17 A I can hear but I can't understand.

18 Q Well, lot of people say that about me,
19 Mr. Davis.

20 A Old age. That's what it is.

21 Q You or me? Just tell us what happened that
22 afternoon while you were working at that precinct.

23 A Well, we were standing over there and
24 observing people coming in, going in to vote and Ms.
25 Kurita, she came up, waiving her hands and all of a

1 sudden she -- she had a sign. All of a sudden she put
2 it down and walked across the line.

3 Q Walked across what line?

4 A The line that you go, you're supposed to stay
5 100 feet behind the line.

6 Q She walked across it and where did she go?

7 A She walked across it and walked into the
8 voting place where to vote.

9 Q How long was she in there?

10 A Approximately ten minutes, give or take a
11 minute or two.

12 Q Did you see her come back out the voting
13 precinct?

14 A Yes, sir, I did.

15 Q Was this while polls were open?

16 A They were voting. People in there voting
17 when she went in because I saw them go in before.

18 Q Did anybody else with her go into the polling
19 precinct?

20 A Well, her campaign manager went. He had a
21 sticker on his right side of his shirt.

22 Q What did the sticker say, the best you can
23 recollect?

24 A It had Kurita on it.

25 Q How long was he in there?

1 A Oh, approximately ten minutes, give or take a
2 few minutes.

3 Q Did you observe him leaving the voting
4 precinct?

5 A Yes, sir.

6 Q Could you see what they did when they went
7 into the polling place?

8 A No, sir, I couldn't see what they did. I
9 could just see them when they went in and come out.

10 MR. BARRETT: I think that's all. Affidavit
11 if you want to -- I'm happy to read it. It's in the
12 record.

13 CHAIRMAN SASSER: That would be fine.

14 MR. BARRETT: Be it first duly sworn he makes
15 affidavit, citizen and resident of Cheatham County,
16 Tennessee.

17 On August the 7th, I volunteered to work as
18 an election observer at Harpeth Hill High School
19 polling station in the 6th District. At approximately
20 2:00 p.m. on the August 7th I personally observed
21 Senator Rosalind Kurita come to the polling station to
22 come with the individual that had previously been
23 identified to me as her campaign manager for Senator
24 Kurita's campaign.

25 Senator Kurita and the individual identified

1 as her campaign manager at the polling station crossed
2 the designated line over which no campaign should take
3 place. That line was clearly delineated and observed
4 by all other campaign workers.

5 Senator Kurita's companion had placed on the
6 right side of his shirt a sticker, emblem meant to
7 designate himself as a supporter of Senator Kurita.

8 I objected to the comparison of Senator
9 Kurita, that was inappropriate for him -- companion of
10 Senator Kurita, it was inappropriate for him to enter
11 the polling station as a political adversary, however
12 my objection was not acknowledged.

13 I called attention to this intrusions at the
14 polling station to a designated poll worker who also
15 took no steps to terminate the intrusion of Senator
16 Kurita or her campaign worker.

17 Senator Kurita and her escort remained in the
18 polling station in the presence of prospective voters
19 for the period of approximately ten minutes until they
20 exited the polling station.

21 I am familiar with Senator Kurita to the
22 extent necessary to know that Harpeth High School was
23 not designated voting district for her to be casting
24 her personal vote.

25 The intrusion into the voting precinct was

1 not only observed by myself, but was also observed by
2 Stanley Aldridge, Tommy Lavender, as well as his wife
3 Tammie Lavender. It is my belief that other people
4 also observed this intrusion. Signed by Mr. Davis.

5 I have no further questions.

6 CHAIRMAN SASSER: Thank you. Mr. Rochelle.

7
8 - - -

9
10 CROSS EXAMINATION BY MR. ROCHELLE:

11 Q Mr. Davis, I'm Bob Rochelle. I represent
12 Senator Kurita over here. I visited the school you
13 were at the other day and have some awareness of things
14 as to the layout and such as that.

15 I believe you stated with Senator Kurita, you
16 didn't say anything, that she had any insignia on or
17 anything like that, did you, in your affidavit?

18 A No, I didn't see anything.

19 Q Speak into the mike there and speak up so
20 they can hear you.

21 A I didn't see anything, no.

22 Q And so you saw Senator Kurita go in the
23 entrance door.

24 A Yes, I sure did.
25

1 Q You know that was the entrance door of the
2 school building.

3 A School building where they were voting, yes.

4 Q And do you know that the -- do you vote in
5 that precinct?

6 A No, I vote in the Ford precinct, West
7 Cheatham School.

8 Q Do you know that, in fact, that building
9 houses a gymnasium where the voting was taking place?

10 A Yes. Also a restroom.

11 Q Yeah. This is the "Pottygate".

12 A Yeah.

13 Q You saw her go into the building housing the
14 gymnasium.

15 A She wasn't in the building. I didn't know
16 where she went after she went in there.

17 Q You said you saw her --

18 A I saw her enter into the building, yes, sir.

19 Q Enter into a building that you know housed a
20 gymnasium where you know the voting was taking place.

21 A Yes. And I confronted her election manager
22 and I asked him why did she go in.

23 Q Well, that's okay. I can't take you too far
24 out of your affidavit. Who were you there in support
25 of?

1 A Who did I support?

2 Q No. Who were you there at the voting place
3 in support of?

4 A I'm --

5 Q Who were you out there campaigning for?

6 A Oh, Mr. Jim (sic) Barnes. Jim (sic) Barnes.

7 MR. ROCHELLE: Oh, okay. So Mr. Barnes.
8 Okay. Alright. Alright. I think your testimony and
9 your affidavit matches up pretty much.

10 THE WITNESS: Yeah. Well, you know, if you
11 know the truth, the truth will set you free.

12 MR. ROCHELLE: Amen.

13 THE WITNESS: Exactly the way I saw it I
14 tried to tell it the way I saw it. I appreciate it.

15 MR. ROCHELLE: Thank you.

16 CHAIRMAN SASSER: Mr. Barrett, any redirect?

17 MR. BARRETT: Hold on one second.

18 CHAIRMAN SASSER: Do you have any redirect,
19 any questions for Mr. Davis from the committee?

20 MR. OWEN: I don't have a question. Is it
21 appropriate to ask questions regarding the contest, the
22 initial statement from Mr. Barnes at this time
23 regarding this testimony?

24 CHAIRMAN SASSER: Yes.

25 MR. OWEN: Mr. Barrett --

1 MR. PHILLIPS: Mr. Davis, you're excused.

2 MR. OWEN: -- my question goes to the --

3 MR. BARRETT: Are you through with Mr. Davis?

4 MR. OWEN: Yes, sir.

5 MR. BARRETT: Mr. Davis has to get back to
6 the church revival. Been cooking chicken since early
7 this morning. Everybody is invited.

8 THE WITNESS: You're invited.

9 MR. OWEN: We'll probably be here until
10 Sunday anyway.

11 Mr. Barrett, my question goes to your initial
12 statement in the challenge and you're saying that
13 because of Senator Kurita's entering into the building
14 regardless of what she entered it for, but she was
15 there for ten minutes, why is going to the restroom for
16 ten minutes grounds for disenfranchising an entire
17 voting precinct? That's my question.

18 MR. BARRETT: I don't know what she did in
19 there. Nobody knows what she did except her. She
20 did -- excuse me. Let me finish. She did cross the
21 boundary line.

22 There's a reason for that boundary line and
23 she crossed it, and her campaign manager crossed it
24 wearing campaign paraphernalia. There's a clear
25 violation of the law.

1 I'm going to read you the law. I'll tell you
2 why -- it's part of the overall circumstances of the
3 election. It's like putting feathers on something.
4 One feather may not be enough to sink it but if you put
5 enough on you'll sink it and all this tied together I
6 think leads to an inescapable uncertainty, incurable
7 uncertainty.

8 There's a quote from the Supreme Court that
9 says -- if he can find it, in effect, that crossing
10 that line is enough to constitute a serious violation
11 of the right of the people to vote without harassment
12 or intimidation.

13 MR. ROCHELLE: I think you need to produce
14 that case. That's not what that case said.

15 MR. BARRETT: What does it say?

16 MR. ROCHELLE: They were construing the
17 statute that I passed that said you had to establish a
18 boundary away from the entrance of the building and
19 what that case was -- Supreme Court said yes, you can
20 do that, that it's within the authority of the Courts
21 or of the State to prohibit campaigning within a
22 reasonable distance from the entrance of the building.

23 That's all that case says. It's very
24 important but that's what the case says.

25 CHAIRMAN SASSER: If we're going to cite and

1 argue about what a case says, does anybody have a copy
2 of this thing?

3 MR. BARRETT: Doug is trying to find it.
4 Showed it to me this morning.

5 CHAIRMAN SASSER: Alright. It's okay with
6 y'all if somebody, we can get Mr. Yarbro over there to
7 get the cite, we can get the case and we don't need to
8 rely on Mr. Rochelle and Mr. Barrett for their
9 interpretation.

10 MR. BARRETT: The case is Emery vs. Robertson
11 County Election Commission, 586 S.W. 2d, 103, and it
12 says -- this appeal is two consolidated cases involves
13 the validity of August 1978 contests of the office for
14 Sheriff in Robertson County.

15 In a written opinion from the 22nd of
16 September, 1978, the learned Chancellor voided 68 votes
17 and found two illegal voters that were barred from
18 casting their ballots.

19 The Chancellor's comments about these
20 irregularities are significant. The Court upon review
21 of testimony involved with these five irregularities
22 does not believe that there's been a showing by a
23 preponderance that anyone of these five instances or
24 occurrences should in anyway affect the outcome of the
25 election. It does not mean that these acts are to be

1 condoned.

2 It is this Court's position, as it should be
3 the position of all persons charged with the
4 responsibility of fairness, that no person shall be
5 within 100 feet distance and be in a position to have
6 someone believe that he may or may not be trying to
7 influence voters or the operation of the election
8 process.

9 That's the law. The mere presence of
10 crossing that line and entering that building lead some
11 people to believe that they were trying to improperly
12 influence the voter which is contrary to the law and
13 it's a misdemeanor.

14 CHAIRMAN SASSER: Mr. Rochelle, can you
15 reserve your response to that until after, when you
16 present your case? Is that acceptable?

17 MR. ROCHELLE: That would be fine.

18 MR. BARRETT: We have a little bit of a
19 dilemma in regards to Paragraphs 7 to 11 which deals
20 with activities at the Jaycee Activities Center in the
21 Fairgrounds voting precinct in Montgomery County.

22 We've got three live witnesses, one of whom
23 is here and the other two are on their way from
24 Clarksville. I understand they departed there some 20
25 minutes ago which means it will be at least another 20,

1 30 minutes before they get here.

2 We're ready to put Ms. Meriweather on but
3 before we do that, I'd like to offer a little
4 background to that testimony in relation to the
5 witnesses interviewed by Mr. Rochelle, Senator Rochelle
6 and myself.

7 Let me have a little background. Attached to
8 Mr. Rochelle's response to Senator Kurita to the
9 contest on the primary election, Exhibit B, C and D --

10 A SPEAKER: What page?

11 MR. BARRETT: Exhibit in response to Senator
12 Rochelle, their applications to vote. That will help
13 you find it. It's marked down at the right hand corner
14 Exhibit B, D & C.

15 That shows that the 201st person to apply for
16 a ballot was James Walker, Jr. That's the gentleman
17 that's on his way from Clarksville.

18 The 202nd person to apply for a ballot was
19 his wife, Lynnette Walker. Both of them are in the car
20 together. And the 203rd person to apply for a ballot
21 in that precinct was Ms. Meriweather who is here and
22 I'm going to ask her to come up here in a minute.

23 Before I do that, I want to direct your
24 attention to some of the testimony of the officer of
25 the election at that precinct, one Ms. Pace.

1 Ms. Pace was very insistent about her
2 testimony at the time that we took -- she gave her
3 statement and I want to read a little bit of it to you
4 because I think it raises questions about her
5 credibility.

6 CHAIRMAN SASSER: Mr. Rochelle, is the
7 testimony that Mr. Barrett is about to read, is that in
8 the materials you distributed to us this morning?

9 MR. ROCHELLE: If you'll look at Page 5, it
10 starts about the middle of the page, Mrs. Pace. Now --
11 it depends on what part George is going to refer to.

12 We put the parts that we thought were
13 relevant and addressed the issue in there so, just so
14 you'll have it there, it's Page 5. I think the bottom
15 half of the page.

16 CHAIRMAN SASSER: The Committee will note
17 this is the reply argument filed on behalf of Senator
18 Rosalind Kurita.

19 MR. BARRETT: Little bit more than is in Mr.
20 Rochelle's file. I'm not -- he's like any lawyer, he's
21 going to show what's favorable to him.

22 Ms. Pace was -- I asked her a particular
23 question because I understood that she was on an Art
24 Board that had been the recipient, Public Art Board
25 that had been the recipient of grants from the

1 Legislature through the effort of -- partly through the
2 effort of Senator Kurita.

3 We don't live in a vacuum and we know that
4 grants to counties and cities from the State are
5 usually cleared with the Legislature, Legislators from
6 that area or district.

7 MR. ROCHELLE: Again, Mr. Barrett is
8 testifying. The Arts Commission didn't ask Legislators
9 where they were going to give their money, that I
10 remember.

11 But she's not a member of the Arts Commission
12 or Senator Kurita is not. She's a member of an Arts
13 Caucus, I think, 35 members of the Legislature that say
14 we love folks in the arts.

15 If you're going to testify, let's get the
16 right names and the rights groups involved.

17 MR. BARRETT: I'm going to do that, Mr.
18 Rochelle, if you'll just give me a minute. I was very
19 careful to ask Ms. Pace, very emphatic, I say, "Now,
20 Ms. Pace, do you know her, being Senator Kurita?"

21 "Yes, I do.

22 "How do you know her?"

23 "Well, I know her ever since she ran for
24 office, started running for office years, I'm not sure
25 how many years ago" and I said, "About eight years ago"

1 and she said, "I'm not sure. I first knew her when her
2 picture was in the paper with Dr. Kurita, Dr. Kurita
3 was doing some sort of new eye procedure. That was the
4 first thoughts I had of her."

5 Now, I said, "Did you ever call upon her for
6 any assistance? I mean personal."

7 "No, I haven't."

8 "Do you serve on Art Boards?"

9 "On a what?"

10 "One of the community boards."

11 "Art board did you say?"

12 "Yes, ma'am."

13 "No. I've been a teacher, educator for 41
14 years and I've worked with Teachers Association, if
15 that's what you mean."

16 Now, I want to direct your attention to a
17 filing we made in which we attached the membership of
18 the Clarksville Art Commission which shows her as an
19 officer and it shows that Commission the recipient of
20 grants from the State of Tennessee, if I can put my
21 hands on it.

22 Then I asked her how she voted in the
23 primary. She said she thought Republican.

24 A SPEAKER: Ms. Pace or Ms. Meriweather?

25 MR. BARRETT: I'm talking about Ms. Pace, the

1 officer of the election who testified about denying
2 belonging to an Arts Board, who testified she voted in
3 Republican primary and she voted in the Democratic
4 primary, and who testified that Mr. Walker appeared to
5 be under the influence of something and that response
6 -- I'm raising questions about her credibility, one,
7 the art, two, whom she voted for and three, her
8 so-called testifying -- testimony about the, quote,
9 conduct and appearance of a couple of a voters, Mr. and
10 Mrs. Walker, and they'll be here to testify and Ms.
11 Meriweather is here to testify.

12 CHAIRMAN SASSER: Mr. Barrett, just for
13 everybody on the Committee and the State Primary Board
14 that's been so patient out there, being so diligent,
15 we're going to let this go until about noon today.

16 We're going to take a 30 minute break for
17 lunch, wherever we are, if that's convenient with
18 counsel.

19 MR. BARRETT: You're going to when?

20 CHAIRMAN SASSER: Noon today and take 30
21 minute break for lunch, if that's convenient with
22 counsel.

23 MR. BARRETT: She may take five, ten minutes
24 depending on Mr. Rochelle's cross examination. If we
25 could then adjourn, the Walkers would be here by the

1 time you come back from lunch.

2 CHAIRMAN SASSER: We'll let Ms. Meriweather
3 complete her testimony and have questions from the
4 Committee and break for lunch.

5 MR. FORRESTER: What is Mrs. Pace's position
6 and title?

7 CHAIRMAN SASSER: For the record, Chip
8 Forrester asked for clarification on Mrs. Pace's title
9 position and title.

10 MR. BARRETT: She was the officer of the
11 election, which means she was the chief -- one election
12 worker described her as the chief honcho.

13 MR. FORRESTER: In Montgomery County.

14 MR. BARRETT: No, that precinct only.

15

16 - - -

17

18 LENORE MERIWEATHER,

19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BARRETT:

21 Q Ms. Meriweather, would you state your name
22 for the record, please?

23 A Lenore Meriweather.

24 Q Ms. Meriweather, everybody got to hear you
25 now. This is your chance to sing out.

1 A That's usually not a problem.

2 Q I didn't think so from talking to you
3 previously. Where do you live, please, ma'am?

4 A I live at 1104C Plymouth Road, Clarksville,
5 Tennessee.

6 Q And where do you vote?

7 A At the Jaycee Building.

8 Q In the Fairgrounds.

9 A Yes.

10 Q In Montgomery County.

11 A Yes, sir.

12 Q Did you vote in the August 7th primary?

13 A I did.

14 Q Approximately what time did you go vote,
15 please ma'am?

16 A It was after work. Get off from work about
17 3:30, had a couple errands. Probably about between 5
18 and 5:30.

19 Q You gave an affidavit. Do you remember that,
20 Ms. Meriweather --

21 A Yes, I do.

22 Q -- and in which you said what happened when
23 you went to vote?

24 A Yes, sir.

25 Q The record shows that you're the 203rd person

1 to apply for a ballot in that primary.

2 A If you say-so.

3 Q Thank you. That's what the record shows.

4 And describe when you came in to vote, would
5 you just tell us what you observed when you came in to
6 vote?

7 A When I first went in to vote, naturally I
8 went to the wrong spot. I went to where you sign in
9 but I had to go and fill out the --

10 Q A little piece of paper?

11 A Yes. And I was behind a couple and --

12 Q Would you describe that couple, please?

13 A Man and a woman. They were -- it was a white
14 couple and I really didn't pay that much attention to
15 what they looked like. I just know that.

16 And I remember the man asking -- at that time
17 I didn't know what her name was, asking a lady that
18 handed him the paper, "What about Tim Barnes?" She
19 said, "He's a Republican."

20 Q Let me ask you a question right there. The
21 lady that handed this gentleman before you, right
22 before you an application for a ballot, what did she
23 look like?

24 A She was -- she's a white lady. She had on a
25 red jacket, pair of glasses. Her hair was light

1 colored. I don't think it was blond. It was just
2 light.

3 Q We've established through the testimony that
4 that's Ms. Pace. She was the officer of the election
5 for that precinct.

6 Go ahead. What did Ms. Pace say to him?

7 A He asked, "What about Tim Barnes?" And she
8 said, "Oh, he's a Republican." That sort of annoyed me
9 when she said that.

10 Q What did you do?

11 A I said, "Did you tell that man that Tim
12 Barnes was a Republican?" She said "No, no, I didn't
13 say that." I said, "Yes, you did."

14 He's not a Republican because my Local has
15 endorsed him, my union local. I said, "He's not a
16 Republican." She said, "Well, if I said that I didn't
17 mean to say that. What I meant to say was, he's
18 running against her." I said, "Well, that's not what
19 you said."

20 But the couple that moved further down and I
21 really don't know if they heard what I said because my
22 intention was directed at Ms. -- at that time, I didn't
23 know if it was Pace or Page but it was Margaret.

24 Q Go ahead. What happened next?

25 A After that, I got my sheet to fill out,

1 marked Democrat. Went down to the first place I went,
2 signed in, went to the voter booth and I was still kind
3 of annoyed. So I asked the lady --

4 Q Which lady was this?

5 A This was the lady that was by the booth where
6 I went.

7 Q Operating the machine, machine operator?

8 A Yes. Yes. And I said, "Where are they doing
9 that at?" She's telling -- what she told that man,
10 that Tim Barnes was a Republican. The lady in return
11 said, "Well, they've been doing it all day."

12 Q What did you say then?

13 A I went ahead and voted. I -- after I
14 completed my vote, I started out the building, turned
15 back around to go get the lady's name. She was bent
16 down. I saw the first name was Margaret. The last
17 name had about four letters in it but I couldn't see it
18 real clearly so I knew it was Pace or Page.

19 After I did that, I turned back around and my
20 business agent for my union was outside on the highway
21 and I went and told them what had happened. I also
22 called the president of my union, spoke with them about
23 it. I didn't know what else to do. So that's what I
24 did.

25 Q Did you subsequently give an affidavit?

1 A Yes.

2 Q This is affidavit of Ms. Meriweather. "On
3 Thursday, August the 7th after work I went to vote at
4 my precinct at the Jaycees Building. I signed in and
5 filled out the paperwork. There was a couple in line
6 ahead of me and I heard the man say, 'What about Tim
7 Barnes? What is he?' to which the election official
8 with a name tag that said Margaret Pace replied, 'He's
9 a Republican.' I said to her, 'Margaret Pace, did you
10 just tell that man Tim Barnes is a Republican?' And
11 she said, 'No, I didn't.' Then she said, 'Well, if I
12 did, I didn't mean to.' When I got to the voting booth
13 I said to another election official, an
14 African-American lady, 'Why is Margaret Pace saying Tim
15 Barnes is a Republican?' The lady said, 'I don't know.
16 They've been doing that all day.' I voted, then went
17 outside, told Ricky Wallace about what happened and I
18 called Robert Lewis, also. Mr. Wallace is a steward
19 and Mr. Lewis is president of the Machinists Local."

20 That's a Trane plant in Clarksville. You may
21 ask.

22
23 - - -
24
25

1 CROSS EXAMINATION BY MR. ROCHELLE:

2 Q You've taken over up here, George. You've
3 got stuff laying everywhere. I don't want to knock it
4 off.

5 Ms. Meriweather, I'm Bob Rochelle and I
6 represent Senator Kurita. I read your affidavit very
7 good, heard your testimony.

8 Do you know the name of the lady that you
9 were talking to?

10 A Yes, sir. Her name is Margaret Pace, I
11 believe.

12 Q And at the end of the day, after that, when
13 you went on and to vote and you saw the machine
14 operator --

15 A Yes, sir.

16 Q -- what was her name?

17 A Lena Crouch.

18 Q Alright. You didn't mention her name in the
19 affidavit but is she the one that is supposed to have
20 said that, that I've been doing it all day or
21 something?

22 A Yes, sir. I didn't mention her name.
23 Sometimes you know a person's face and don't know their
24 name. Clarksville is not a great big place. I know
25 the children, they're friends of my children. I know

1 the mother but I wasn't real sure of what her first
2 name was.

3 Q Y'all been neighbors 15, 20 years, I take it.

4 A No. No, sir, we're not neighbors.

5 Q You're not. Okay?

6 A Our kids just went to school with mine.

7 Q Alright. I don't know whether you have read
8 the response that we filed. Have you had a chance to
9 read the response?

10 A No, sir.

11 Q Well, we'll take that up with the Board in
12 regard to the incident regarding Ms. Pace. I just
13 wanted to talk to you about Lena Crouch for a minute
14 because we met -- we interviewed Lena Crouch the other
15 day and she explained that she had known you for many
16 years and that we asked her if you made that statement
17 about what's with Margaret Pace doing this and she
18 didn't remember you asking. Then we told her that you
19 had put in your affidavit about how she said Margaret
20 Pace been doing that all day.

21 A No, sir. I didn't say she said Margaret
22 Pace. I said she said, "They've been doing it all
23 day." Who she was referring to, I don't know.

24 Q She says she doesn't remember that, either.

25 And so I asked her, "Is there any

1 circumstances where you might have said that, that
2 they've been doing it all day?" Her response, "No."

3 A She said it.

4 MR. ROCHELLE: That's all.

5 MR. BARRETT: In order that the record be
6 clear, these are the questions that Mr. Rochelle asked
7 Ms. Crouch and this is her responses.

8 "Do you know Lenore Meriweather? "

9 "Yes, I do."

10 "Did she make complaint to you that day?"

11 "If she did I can't recollect that she did.
12 I can't recollect."

13 "Specifically she said she complained to you
14 about Margaret Pace was telling people that Tim Barnes
15 was a Republican." You said, "Oh, she's been doing
16 that all day." Answer: "I don't remember that."

17 "Did you say that?"

18 "No. If I did, I don't remember saying
19 that."

20 MR. ROCHELLE: Finish it up. What's the next
21 question?

22 MR. BARRETT: I've closed my book. You can
23 ask her that.

24 MR. ROCHELLE: Can't do that, now. The next
25 question is, "Is there any circumstances where you

1 might have said that?" The answer, "No."

2 MR. BARRETT: Any questions?

3 CHAIRMAN SASSER: Anybody on the Committee
4 have any questions?

5 MR. OWEN: I have one. I apologize for
6 taking so much time on these questions but this is a
7 very serious allegation. This is the most serious
8 allegation we've heard so far as far as I'm concerned.

9 Now, Ms. Meriweather, let me ask you, what
10 you were testifying to is exactly what you have said in
11 your affidavit.

12 THE WITNESS: Yes, sir.

13 MR. OWEN: You stand by that testimony and
14 you are under oath and you swear that what you have
15 just said is true.

16 THE WITNESS: Yes, sir, I do.

17 MR. OWEN: Okay. Is Ms. Pace here? Okay.
18 Thank you very much.

19 MR. BARRETT: I did find for the members --

20 CHAIRMAN SASSER: Can we excuse Ms.
21 Meriweather?

22 MR. BARRETT: I think so, yeah. Yeah. Thank
23 you Ms. Meriweather. You may leave.

24 I referenced -- Exhibit 3 to the contestants,
25 that's us, witness list and the Exhibit 3 is the

1 Tennessee Art Grants for the fiscal year 2007 which
2 shows to Montgomery County, City of Clarksville,
3 Clarksville Montgomery County Arts and Heritage
4 Development, several grants, one of 12,000, one 5200,
5 one 500 and the Board of Directors which shows Margaret
6 M. Pace, secretary/treasurer of the Clarksville Art and
7 Heritage Development Council, Exhibit 2 and 3.

8 MR. ROCHELLE: Ms. Meriweather leave? I want
9 to ask her one more question.

10 CHAIRMAN SASSER: I think she's gone.

11 MS. ABLES: Could you tell me if the poll
12 workers in this district were selected or recommended
13 by either particular party? Typically those are, at
14 least in my district, the party, each party has
15 approval of the poll workers and are submitted by the
16 two parties.

17 The poll workers that are involved, is there
18 any information on who they were recommended by or
19 which party they were representing at that time?

20 MR. ROCHELLE: There is nothing in the record
21 on it. I think what we find in Wilson County, and I'm
22 sure it's the same in Montgomery County, they're so
23 hard-up for election workers that they can't get the
24 party to find enough folks to come in. They go out and
25 try to find folks.

1 The record that you're going to see here in a
2 little bit shows Margaret Pace is -- in fact, that
3 whole crew out there, election workers, been election
4 workers 15, 20 years. But now I don't think it's
5 anywhere in the record as to whether they were chosen
6 or solicited by either party.

7 If I could comment on this suggestion, and I
8 have to look at Senator Owen on this one, if you serve
9 on an Arts Commission or an arts group in your local
10 community, that somehow or another -- and you apply for
11 a grant from the Tennessee Arts Commission, that
12 somehow or another you're going to be beholding to your
13 Legislator.

14 Senator Kurita is not on the Tennessee Arts
15 Commission. She's a member of the Tennessee
16 Legislative Arts Caucus.

17 It's sort of like having the Old Hickory Lake
18 Caucus. We all love Old Hickory Lake but before they
19 drain it, they don't have to caucus.

20 And so in regard to this exhibit you just had
21 presented to you, I would suggest to you that in real
22 life, the Tennessee Legislative Caucus that supports
23 the audits and is composed of about 35 Legislators, in
24 law and in practice, has no say-so at all over the
25 decision of the Tennessee Arts Commission on how grants

1 are made.

2 MS. ABLES: This may be for you, George, I'm
3 just curious if anybody out there has looked into
4 Ms. Pace's voting history, though? Does she have a
5 record of being on one side or the other in her own
6 voting history?

7 MR. BARRETT: We've got it. While they look
8 for that, let me address -- I'm not --

9 CHAIRMAN SASSER: I'll remind counsel for
10 both people we've had some people travel from East
11 Tennessee starting at 4 a.m. Central Time. Might be
12 getting hungry for lunch.

13 MR. BARRETT: I didn't offer membership on
14 the Arts Commission to pass judgment on that. I
15 offered membership to test her credibility as a witness
16 where she denied serving on such a commission and yet
17 she was the secretary/treasurer. That's what that
18 inference was offered for.

19 It doesn't have anything to do with the Arts
20 Commission or arts caucus or anything else. It goes to
21 the credibility of the witness, and I want to ask Ms.
22 Meriweather, if I may, one more, couple more questions
23 which goes to the credibility of Ms. Pace, if that's
24 alright.

25 Anybody object?

1 REDIRECT EXAMINATION BY MR. BARRETT:

2 Q Did you have a chance, Ms. Meriweather, to
3 observe the couple before you, immediately before you
4 when you went in the polling booth?

5 A Yes, I did.

6 CHAIRMAN SASSER: Ms. Meriweather, you're
7 still under oath.

8 THE WITNESS: Okay.

9 Q Yes, you did?

10 CHAIRMAN SASSER: Repeat the question. I'm
11 sorry to interrupt.

12 Q Did you have a chance to observe the couple
13 before you, immediately before you when you went into
14 the polling place?

15 A I observed it was a man and woman and I
16 observed that they were white.

17 Q Was it a large man, do you remember,
18 physically?

19 A No, sir, I don't remember.

20 Q You don't remember. Do you remember his
21 conduct, demeanor? Was he loud?

22 A I wouldn't say that -- in my opinion he
23 wasn't loud. He just asked a question.

24 Q Did he appear to be under the influence of
25 anything?

1 A He didn't appear -- by what he said, what
2 about Tim Barnes, he didn't appear to be under the
3 influence of anything. He could have been under the
4 influence of a lot of things but --

5 Q But he didn't appear to.

6 A He didn't appear to.

7 Q Did he appear to be agitated?

8 A No. He asked the question, she answered the
9 question and that was about it. He asked, "What about
10 Tim Barnes" and she said, "Oh, he's a Republican" and
11 then he didn't say anything. I took it from there.
12 You know, he kind of moved off.

13 MR. BARRETT: That's all.

14 CHAIRMAN SASSER: Mr. Rochelle, do you have
15 anything? Anybody on the Committee have anything?

16 We're still looking for that answer. Without
17 objection from anybody, we need to let Ms. Meriweather
18 go. She's already escaped once.

19 Thank you so much. If it's okay with you --

20 MR. ROCHELLE: Question, and I thought she
21 was trying to say it was directed to me as to Margaret
22 Pace.

23 MS. ABLES: Yes, if she had a strong history
24 in one party or the other.

25 MR. ROCHELLE: Let me remind you we're going

1 to have a lot of testimony about Margaret Pace when we
2 present our evidence and we'll explain all of these
3 situations that you heard about, at least offer a
4 contrary view.

5 One of the odd things about this case is that
6 one of the foundations of Mr. Barrett's original case
7 was that Margaret Pace was a Republican who was leading
8 the effort to get people in to -- to vote in the
9 Republican primary so they wouldn't be able to vote for
10 Rosalind Kurita or couldn't vote -- excuse me, wouldn't
11 be able to vote for Tim Barnes.

12 You would think that the leader of that
13 effort, as she was identified, would have then gone
14 into the Democratic primary and voted for Rosalind
15 Kurita against Mr. Barnes.

16 In fact, she didn't really remember how she
17 voted but she said I think I voted in the Democratic
18 primary but, in fact, she voted in the Republican
19 primary.

20 So the leader of the effort to get Barnes
21 supporters into the Democratic primary, supposedly you
22 would have thought if she was a leader of that effort
23 she would have been in the Democratic primary voting
24 for Kurita. She voted in the Republican primary.

25 MS. ABLES: I appreciate that but my real

1 question was -- I don't know if this is still on -- my
2 real question was her history.

3 MR. ROCHELLE: I think she's a switch-hitter,
4 my best memory of it.

5 MR. BARRETT: Are we waiting on the Walkers?

6 CHAIRMAN SASSER: Mr. Owen wants to say one
7 thing.

8 MR. OWEN: Very quickly, and Senator Rochelle
9 will recall the Tennessee Arts Commission receives its
10 funding from the license tags money and does not
11 receive funds directly from the Legislature.

12 I think that's irrelevant to what we're
13 talking about here. Mr. Barrett says it's irrelevant.
14 He was talking about the credibility. Mr. Rochelle
15 agrees that that's where the money comes from and goes
16 and how it is appropriated by the Arts Commission.

17 CHAIRMAN SASSER: Thank you very much.

18 Without objection, let's break for 30 minutes
19 for lunch. Let's have everybody eat very quickly.

20 Members of the Executive Committee just stay
21 seated for one second. I'm about to give you
22 instructions about how to get some food.
23 (12:07 p.m., a luncheon recess was had until 1:03 p.m.)

24 CHAIRMAN SASSER: Mr. Barrett, do you have
25 another couple witnesses you want to get to and then

1 maybe before we start we'll ask the two timers where we
2 are on time for both parties?

3 A SPEAKER: Mr. Barnes has used up 56 minutes
4 of his 90 minutes and Ms. Kurita's side has used 23
5 minutes of her time.

6 MR. ROCHELLE: What was this? On cross
7 examination, you're including cross examination?

8 MR. PHILLIPS: That's what the rules say.

9 MR. ROCHELLE: In time?

10 MR. BARRETT: Ms. Walker, please.

11

12 - - -

13

14 GAYE LYNNETTE WALKER,

15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. BARRETT:

17 Q Would you state your name for the record,
18 please, ma'am?

19 A Gaye Lynnette Walker.

20 Q Ms. Walker, you're going to have to speak
21 right into that very close so they'll hear you. Speak
22 straight into that.

23 Where do you live, Ms. Walker?

24 A In Clarksville, Tennessee.

25 Q And are you a registered voter?

1 A Yes.

2 Q Did you vote in the August 7th primary this
3 year?

4 A I did.

5 Q Where did you vote?

6 A At the Jaycees.

7 Q Could everybody hear her? They can't hear
8 you, dear.

9 Now, where did you vote?

10 A At the Jaycees.

11 Q Is that also the same as the Fairgrounds?

12 A Yes.

13 Q And what time did you go vote?

14 A It was after 4:30 when I got off.

15 Q With whom do you go vote?

16 A My husband.

17 Q Do you remember what number voter you were
18 in?

19 A 201 and 202.

20 Q 201 was you and 202 was your husband?

21 A One or the other. I can't remember which.

22 Q 201st, 202nd person. Do you know who was
23 immediately in front of you?

24 A The 200th because he was the 200th voter and
25 they sung He's a Jolly Good Fellow to him.

1 Q Who sang that?

2 A The people that signed in.

3 Q The 200th voter, when he got there they sang
4 You're a Jolly Good Fellow. Who was behind you?

5 A My husband was behind me and then there was
6 another lady behind him.

7 Q Do you know who she was?

8 A Uh-uh.

9 Q Do you know, was she an African-American?

10 A Yes.

11 Q Tell us what happened -- were you in front or
12 behind your husband?

13 A I was in front of him.

14 Q You were in front of him. Tell us what
15 happened when you went up and asked for an application
16 for a ballot.

17 A She said we had --

18 Q Who is "she" now?

19 A The first lady you gave your card to.

20 Q Did you know who she was?

21 A No. She was just an older lady with a red
22 jacket on.

23 Q What did you say and what did she say?

24 A She told us that we had to choose Democrat or
25 Republican and we wasn't sure. She said if you want

1 Kurita, vote Democrat, if we want Barnes, vote
2 Republican.

3 Q Say that again.

4 A If we wanted to vote for Kurita, we had to
5 vote Democratic and if we wanted Barnes, we had to vote
6 Republican.

7 Q What did you say?

8 A We just marked Republic because we wanted to
9 vote for Barnes.

10 Q Then you went on around and voted.

11 A Yes.

12 Q Did you hear your husband ask for a ballot?

13 A Uh-huh.

14 Q What did she tell him?

15 A The same, because we asked together.

16 Q You asked together.

17 A Yeah.

18 Q Did he ask for a Republican ballot?

19 A Uh-huh.

20 Q Then you went around and voted. When you
21 voted, did you find Tim Barnes' name where you could
22 vote for him?

23 A No.

24 Q You gave an affidavit, didn't you, Ms. --

25 A I did.

1 Q That affidavit says be sworn, my husband and
2 I went out to vote at the Fairgrounds on Thursday,
3 August 7th. When we arrived to start filling out our
4 cards we had to mark Democrat or Republican. We did
5 not know that we would have to pick. When we asked the
6 lady who gave out the cards what was Kurita, she said
7 Democrat. Well, we wanted to vote for Tim Barnes and
8 she said that he was a Republican. When we were voting
9 we noticed that another member -- that neither one of
10 them was on the ballot they gave us and I overheard
11 another lady say that the first lady should not be
12 telling people Tim Barnes was a Republican and that she
13 was misinforming people. When we were walking out the
14 door after talking to a man that was standing at the
15 machine and showing how to vote, my husband told him,
16 "They need to say something to that first lady." He
17 told my husband two, three votes are not going to make
18 matter anyway. Then further you saith not.

19 Now, did you hear what the lady behind you
20 said after -- the African-American lady said to
21 Ms. Pace when she said Tim Barnes was a Republican?

22 A No.

23 Q You didn't find --

24 A I went ahead and my husband and I kind of
25 together. They were closer to the same machine voting.

1 Q Was your husband agitated?

2 A No.

3 Q Had he been drinking?

4 A No. He don't drink.

5 Q He doesn't drink? He wasn't under the
6 influence of anything?

7 A No.

8 Q Was he loud?

9 A No.

10 Q Was he boisterous?

11 A No.

12 Q Was he obnoxious?

13 A No, no, because the guy that was at his
14 machine walked us to the door and stood there and
15 carried on a conversation with us.

16 MR. BARRETT: You may ask.

17 MR. ROCHELLE: No questions.

18 MR. BARRETT: No questions? Did you say no
19 questions? Thank you, Ms. Walker.

20 CHAIRMAN SASSER: Does anyone on the
21 Committee have a question? Ms. Walker, I have a
22 question that's somewhat delicate. I apologize for
23 asking.

24 Does your husband have any sort of medical
25 condition or anything like that that could lead someone

1 to think he was under the influence?

2 THE WITNESS: No.

3 CHAIRMAN SASSER: Thank you.

4 MR. BARRETT: Mr. Walker.

5

6 - - -

7

8 JAMES WESLEY WALKER, JR.,

9 having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BARRETT:

11 Q Mr. Walker, state your name for the record.

12 A James Wesley Walker, Jr.

13 Q And where do you live, Mr. Walker?

14 A Clarksville, Tennessee.

15 Q And where are you employed?

16 A Lamar Advertising.

17 Q How long have you been employed with Lamar?

18 A 22 years.

19 Q What do you do for left arm March?

20 A I'm Operation Manager.

21 Q Operation Manager. Are you a registered

22 voter in Montgomery County?

23 A Yes.

24 Q Did you vote in the August 7th primary?

25 A Yes.

1 Q Where do you vote?

2 A At the Fairgrounds, at the Jaycee building.

3 Q What time did you go vote?

4 A It was after 4:30 when my wife got off work.

5 Q Did you go with your wife to vote?

6 A Yeah.

7 Q Did you hear her testify?

8 A Yeah.

9 Q Can everybody hear him? Tell us what
10 happened. The record shows that she was the 201st and
11 you were the 202nd person to vote and Ms. Meriweather
12 was the 203rd person to vote.

13 Tell us what happened when you and your wife
14 went into the polling precinct to make application for
15 a ballot and cast your vote.

16 A We walked up to get our cards filled out and
17 it said that we had to pick Republican or Democrat and
18 we asked the lady which one do we pick if we want to
19 vote for Kurita or Barnes. She told us Kurita was
20 Democrat and Barnes was Republican.

21 Q What did you do then?

22 A We marked Republican on the card.

23 Q Then did you go vote?

24 A Yeah.

25 Q Could you find Mr. Barnes' name on the

1 Republican primary ballot?

2 A No.

3 Q So you didn't vote for him?

4 A No.

5 Q Now, let's backup a little bit. Were you
6 boisterous, Mr. Walker?

7 A No.

8 Q Were you a angry?

9 A No.

10 Q Were you obnoxious?

11 A No.

12 Q Were you under the influence of alcohol or
13 drugs?

14 A No.

15 Q Do you drink?

16 A No, sir.

17 Q You gave an affidavit, I believe, didn't you,
18 Mr. --

19 A Yes, sir.

20 Q You've had an opportunity to read it? Let me
21 read it. This is Wesley Walker states as follows: My
22 wife and I went to vote at the Fairgrounds on Thursday,
23 August the 7th. When we arrived and started filling
24 out our card we had to mark either Democrat or
25 Republican. We did not know that we would have to

1 pick. When we asked the lady who gave out the cards
2 what was Kurita, she said Democrat. Well, we wanted to
3 vote for Tim Barnes and she said he was a Republican.
4 When we were voting we noticed that neither one of them
5 was on the ballot they gave us and I overheard another
6 lady say that the first lady should not be telling
7 people Tim Barnes was a Republican and that she was
8 misinforming people. When we were walking out the door
9 after talking to a man that was standing at the machine
10 and showing you how to vote, I told him they need to
11 say something to the first lady. He told me that two
12 or three voters were not going to matter anyway.

13 Is that accurate?

14 A Yes, sir.

15 Q Tell us what the lady that you sought an
16 application from, the first lady you spoke to, what did
17 she look like?

18 A She was gray haired woman with a red jacket.

19 Q We've established her name is Pace, Ms. Pace.

20 A I don't know her name.

21 Q Who was the lady behind you?

22 A I don't know her name.

23 Q Was she African-American?

24 A Yes, sir.

25 Q Did you hear her speak to Ms. Pace when she

1 said that Tim Barnes was a Republican?

2 A Well, after we had voted, because she was
3 looking for it on the machine, too, and she couldn't
4 find it on the machine.

5 Q Did you hear her exchange with Ms. Pace?

6 A I heard her tell -- I don't think she was
7 just talking to herself but she told them she didn't
8 need to be telling people that, that it was wrong.

9 Q And you were not agitated.

10 A No.

11 Q You're not angry.

12 A No.

13 Q You're not boisterous.

14 A No.

15 Q You're not loud.

16 A No.

17 Q And you were not under the influence of
18 anything or drugs.

19 A No.

20 MR. BARRETT: You may ask him.

21

22

23

24 - - -

25

1 CROSS EXAMINATION BY MR. ROCHELLE:

2 Q Mr. Walker, I'm Bob Rochelle. I represent
3 Senator Kurita. I want to thank you for being here
4 today, helping us discover all the facts in this case.

5 As I heard your statement a moment ago you
6 said that your wife voted first, then you voted, and
7 then there was Ms. Meriweather behind you.

8 Was Ms. Meriweather the one that said she
9 couldn't find him on the ballot, either?

10 A If she's an African-American woman, she was.
11 I'm not for sure what her name is.

12 Q She was the one right after you in the line.

13 A Yeah, I believe so.

14 Q And she told you I can't find Barnes, Kurita
15 on the ballot that she was voting.

16 A She didn't tell me, no.

17 Q But you heard her say that.

18 A Yes.

19 MR. ROCHELLE: Well, let me refer the
20 Committee, if I could, to Exhibit B of our response
21 that was filed previously, the application to vote of
22 Lenore Meriweather that shows she voted in the
23 Democratic primary.

24 That's all.

25 CHAIRMAN SASSER: Mr. Barrett, any redirect?

1 Anything on the Committee on questions?

2 A SPEAKER: I have a question. Mr. Walker,
3 is this your first time to vote in a primary or have
4 you voted before in a primary?

5 THE WITNESS: No, we voted before.

6 A SPEAKER: Thank you.

7 CHAIRMAN SASSER: We have another one.

8 A SPEAKER: Mr. Walker, I'm just curious,
9 when you couldn't vote for Mr. Barnes, why didn't you
10 take any other action after you left the polling other
11 than the affidavit?

12 THE WITNESS: I really didn't know you could
13 do anything. I talked to the guy that was helping with
14 the machine. The way he acted, we done voted
15 Republican. There wasn't nothing else we could do.

16 A SPEAKER: You just felt you didn't have any
17 options at that point?

18 THE WITNESS: Yeah.

19 A SPEAKER: Thank you.

20 CHAIRMAN SASSER: Any other questions? Mr.
21 Walker, thank you and your wife so much for your time
22 today.

23 MR. BARRETT: Call Tim Barnes.

24

25 - - -

1 TIM BARNES,

2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARRETT:

4 Q State your name for the record, please, sir.

5 A Tim Barnes.

6 Q And where do you live, Mr. Barnes?

7 A 974 Dixie D Road, Adams, Tennessee, in
8 Montgomery County.

9 Q And where do you vote?

10 A Well, I early voted but I normally vote at
11 Sango Elementary.

12 Q What's your profession?

13 A I'm an attorney.

14 Q And how long have you been a lawyer?

15 A 23 years.

16 Q And how long have you lived in Montgomery
17 County?

18 A 22 years.

19 Q Have you ever voted Republican, Mr. Barnes?

20 A No.

21 Q You're a yellow dog Democrat?

22 A Yes.

23 Q Have you run for public office before?

24 A Yes, I have, two years ago.

25 Q What did you run for?

Beres & Associates

1 A I ran for the 68th House seat against the
2 Republican incumbent, Curtis Johnson.

3 Q That's part of Montgomery County?

4 A Yes.

5 Q That's part of the county that's represented
6 by Senator Kurita?

7 A Yes, it is.

8 Q Did she give you any help in your primary?

9 A No, she did not. She didn't raise any money,
10 didn't make any contributions, did not attend any
11 fundraisers or any other events.

12 Q Did she attend any rallies you had? She
13 didn't attend any events for you.

14 A No. As a matter of fact, we had one probably
15 less than five miles from her home which was at the
16 Eastland Green Golf Course that had between 150 and 200
17 local Democrats there.

18 We had Secretary of State Riley Darnell, we
19 had then Majority Leader of the House, Kim McMillan,
20 John Morgan. I can't remember everybody but the
21 featured speaker was Ned Ray McWherter. She did not
22 attend that.

23 Q She did not attend that?

24 A No. Joe Pitts was also running at the same
25 time against a Republican. Ken "Togasocki" was there

1 and no, Senator Kurita did not attend.

2 Q Did not attend. Do you know whether or not
3 she gave any assistance to Mr. Pitts in his campaign
4 that year?

5 A I just know from talking with Mr. Pitts that
6 she did not contribute to his campaign, did not attend
7 any of his events, either.

8 Q So that's two Democrats running in that same
9 county.

10 A In Montgomery County against Republicans.

11 Q That was in '07. I believe that was an off
12 year for the Senate seat in your county?

13 A That's correct. She was not running. She
14 was out of session and for whatever reason chose not to
15 support either myself or Joe Pitts.

16 Q Now, you're married. You're a lawyer,
17 Mr. Barnes. You know you have to answer verbally. You
18 can't shake your head.

19 A I'm sorry. I am a lawyer. I'm rarely a
20 client, though.

21 Q They're the worse witnesses.

22 A I recommend for lawyers to be a client. It
23 gives you a different perspective. Yes. I'm married
24 24 years, be 25 December the 30th.

25 Q And what does your wife do?

1 A She is a tenured full professor at Austin
2 Peay State University. She teaches English.

3 Q Teaches English. Favorite subject.

4 When did you come to decide to run for the
5 State Senate for the Democratic primary for this year's
6 primary?

7 A Well, I can tell you it was a very difficult
8 decision and I went back and forth probably in the
9 winter, 2007, 2008 and seriously started considering it
10 in about January or February of this year, and did so.

11 Of course, like many Democrats, I was very
12 incensed at my State Senator's vote that resulted in
13 giving control of the State Senate to the Republicans,
14 and that was one of the primary reasons that I decided
15 to run, plus a lot of encouragement from the local
16 Democrats there in Montgomery County.

17 Q Did you have any communications from Senator
18 Kurita when word got out that you were going to run for
19 the State Senate against her?

20 A Well, indirectly. What I started getting, I
21 started getting calls from prominent Democrats who said
22 things like, "Look, Senator Kurita will not stop
23 calling me unless I call you and ask you to drop out of
24 this race. I'm not asking you to drop out of this
25 race, I want you in this race but if she asks you will

1 you please tell her so she'll stop calling me that I
2 asked you to drop out of this race?"

3 Q And you did not drop out.

4 A No, I did not. Of the few calls that I got,
5 no one seriously asked me to drop out of the race.

6 Q What kind of campaign did you run?

7 A I run a very positive, clean campaign. I
8 followed the rules. I was very circumspect about
9 sticking with issues. I made no personal attacks and I
10 was proud of the campaign and am proud of the campaign
11 that I ran.

12 Q Did Senator Kurita make any personal attacks
13 on you?

14 A Yes. There toward the end, I do know that
15 she was polling constantly because I had a lot of my
16 supporters to call me and say we're receiving these
17 calls and they're polling calls. I was not polling so
18 I knew it had to be her campaign.

19 And there around early voting we started --
20 the negative ads hit and I was just savaged for being a
21 lawyer and about ten percent of my practice involves
22 representing people charged with DUI and I was cast as
23 the person who puts drunk drivers back on the road and
24 sends wife beaters back home.

25 Q Send what back home?

1 A Wife beaters.

2 Q Do you do domestic relations?

3 A I do domestic relations and, of course, part
4 of that involves occasionally domestic assault. I will
5 say that some of the later ads got more politically
6 correct and they said I send spouse abusers back home
7 rather than wife beaters, so --

8 Q Were these ads both in the TV media and the
9 newspaper?

10 A Yes. I quit watching network television
11 because it seemed like I couldn't watch the news
12 without seeing myself in black and white grainy slow
13 motion and I really didn't like for my three children
14 to see those ads. So it was full-time there for about
15 three weeks.

16 Q Alright. What else were you subject to
17 during the course of this campaign, especially the
18 closing days?

19 A Well, in all honesty as far as the negative
20 campaigning, I was prepared for that. I had knowledge
21 of her prior campaigns and I knew what she had done
22 against Representative Tommy Head and I was prepared
23 for that sort of thing, and that's part of the give and
24 take, rough and tumble, although I thought some of the
25 things were unfair.

1 I clearly was on record as supporting inhome
2 healthcare. She sent pieces out saying that I was
3 going to cut inhome healthcare and was on record in the
4 Leaf Chronicle on July 23rd of saying that I supported
5 the expansion of that. But, you know, I can accept
6 that.

7 The thing that later in the campaign that was
8 very difficult for me to accept, I started receiving
9 calls at my office of people saying, "We really don't
10 appreciate these calls you're making because they're
11 offensive, they're annoying, they're repetitive" and I
12 say, "We're not making any calls."

13 I checked to make sure that we had nobody in
14 my campaign making the kind of calls and they would
15 show up on caller I.D. at 999 -- all 999s.

16 They were -- the nature of these calls were
17 purported to be from my campaign. They would come late
18 at night. One woman told me she received 11 phone
19 calls and they would say things like, "Hurrah, Tim ",
20 and hang up or they would purport to be stuttering.
21 Say, "Vote - vote - vote - vote for Tim" and then hang
22 up.

23 As I say, they would be repetitive. And when
24 the people started calling me saying that they didn't
25 appreciate that, I was very upset with that because it

1 purported to be from my campaign and that was my first
2 experience with that kind of dirty political trick and
3 I knew that it was costing me and I felt like that it
4 was illegal.

5 I looked up the statute on harassing
6 telecommunications and it fit that statute so we put
7 the word out so we knew it would get back to the Kurita
8 campaign that we're going to go to the DA about
9 prosecuting these calls. Lo and behold they stopped.
10 That was after quite a period of time of that.

11 Q Was there any response from your colleagues
12 at the Bar on these attacks on your professional
13 conduct as a lawyer?

14 A Yes, there was. I didn't know that they were
15 going to do it.

16 Q Who is "they"?

17 A The local bar.

18 MR. BARRETT: Wait a minute. He's got an
19 objection.

20 CHAIRMAN SASSER: Mr. Rochelle.

21 MR. ROCHELLE: Mr. Chairman, Members of the
22 Subcommittee, I know you don't want us objecting but I
23 have to say to you there has not been a word yet stated
24 by Mr. Barnes that was contained in his original
25 contest, statement of contest or that was contained in

1 the supplemental that we let them get by this and just
2 trying to be agreeable, trying to get everything out.

3 All of these statements -- of all of these
4 statements not a single statement yet has been pled in
5 a statement that was supposed to have been
6 jurisdictional.

7 Now, I know you don't want us objecting but I
8 do feel the necessity to inform you that we never heard
9 any of this stuff before. If we had, we would have
10 been able to take some effort to account for it.

11 CHAIRMAN SASSER: Duly noted. I would note
12 for the record, however, you're going to have a chance
13 here in a minute to cross-examine Mr. Barnes and ask
14 him about this and your objection is noted for the
15 record.

16 Mr. Barrett, I'd also want you to bear in
17 mind that your time is limited. You're going -- some
18 of your time will be consumed when you hopefully want
19 to cross some of Mr. Rochelle's people as well.

20 MR. BARRETT: Thank you.

21 BY MR. BARRETT:

22 Q What --

23 A They did it without my even knowing about it.

24 Q Who is "they"?

25 A The Montgomery County Bar Association. Not

1 as a Bar Association, but members of the local bar.
2 They took out a full page ad. I'll tell you, when your
3 colleagues do something for you like that, it makes you
4 really proud of the kind of people you associate with.

5 I'm proud to be a lawyer, by the way.

6 They took out a full page ad that said
7 basically -- we have it here, but if anybody wants to
8 see it, but it said we do not -- we reject these unfair
9 attacks on Tim Barnes who is one of the most honest
10 members of the Bar who is known for his integrity. We
11 think these type of attacks are beneath the dignity of
12 a State Senator and we demand a retraction. I'm
13 paraphrasing. That's what they felt like they had to
14 do after that.

15 Q Did you subsequently learn that your wife was
16 threatened?

17 A Well, I learned during the course of the
18 campaign. What happened was the Austin Peay College
19 Democrats endorsed me. She didn't know they were going
20 to endorse me.

21 Q Who is "she"?

22 A My wife. Right after that endorsement, my
23 wife was called in to President Hall's office. Had
24 never been called into the President's office before.

25 She's been there, I'm sorry, I can't remember

1 but over 16, 17 years and has an impeccable record and
2 the President informed her there's been a complaint to
3 the Board of Regents and I hate telling you this but
4 you're being closely watched and you have to make sure
5 that you don't do any campaign activity on Austin Peay
6 time.

7 Of course, she reassured him she never would
8 do anything, never has and never would. It was very
9 circumspect about that and she knew the rules.

10 As a matter of fact, two years ago she had a
11 conversation with the General Counsel at the Board of
12 Regents to make sure what the parameters were.

13 So, I took that as very intimidating.

14 CHAIRMAN SASSER: Mr. Barrett, I might
15 encourage you to move along here a little bit. Let's
16 get back, if we can, to some of the facts of the
17 contest rather than talking so much about --

18 Q You heard rumors about the Republicans
19 attempt to persuade the Republicans to vote for
20 Democrats for Senator Kurita?

21 A That's correct.

22 Q What, if anything, did you do about that?

23 A Well, that, of course, went into my decision
24 to contest the election when I heard about all the
25 activities and the -- because I just felt like it

1 wasn't fair result and my party had not fairly chosen
2 their nominee.

3 Q Did you solicit many of these affidavits?

4 A Yes, I did. Well, I did not solicit them.
5 The only one I contacted directly was Ms. Jones.

6 Everyone who has been here to testify and
7 every affidavit that's been submitted were people who
8 called my office that I did not previously know.

9 The people who have been here to testify just
10 did it because they felt like it was the right thing to
11 do and they did not know me before. They called me of
12 their own volition and choice.

13 Q Did you learn there were Republican calls
14 being made into the district?

15 A Yes. That was Ms. Alma Lewis contacted me
16 and, again, I did not know her and she's the one who
17 submitted the affidavit that said that she received
18 telephone calls 6:30 a.m. on election day that said
19 that a person identifying themselves as being with the
20 Republican Party and first question asked, "Are you
21 voting for Tim Barnes?"

22 When she said, "Yes", "We're just here to
23 remind you that Tim Barnes is a Republican, that the
24 Leaf Chronicle reported he was a Republican." They
25 later retracted that. "In fact, he is a Republican and

1 you need to make sure you're going to vote in the
2 Republican primary if you're going to vote for Tim
3 Barnes."

4 That was an attack I was appalled by and
5 worried about how that cost me.

6 MR. BARRETT: You may ask him.

7 CHAIRMAN SASSER: Mr. Barrett, you have
8 approximately 11 minutes remaining.

9 MR. ROCHELLE: He won't ever make it.

10
11 - - -
12

13 CROSS EXAMINATION BY MR. ROCHELLE:

14 Q Mr. Barnes, I'm Bob Rochelle and I think we
15 met the other day, Tuesday, at the interviews.

16 Well, you had several things there. On this
17 event that Governor McWherter was at, did not Senator
18 Kurita call you and express her apologies for not being
19 able to be at the event in advance?

20 A What she said specifically was -- and keep in
21 mind, it's the biggest political event for Democrats in
22 years -- "My computer has been broken, I have a
23 computer repairman coming to my office and I sure would
24 hate to miss the computer repairman so I won't make
25 your event."

1 Q Well, Mr. Barnes, let me tell you what you
2 told your clients many times and your witnesses. When
3 I ask you a question, answer the question.

4 The question is, did Senator Kurita call you
5 in advance of the meeting to tell you that she would be
6 unable to attend and to express her apologies for not
7 attending?

8 A She called me the date of the event about two
9 hours before the event started because I was working on
10 my speech at the time.

11 Q I'm going take it that that's yes.

12 A You can take all my answer for however you
13 want to take it.

14 Q Alright. None of the things that you
15 testified to did you put into an affidavit to be filed
16 with your contest, did you?

17 A No.

18 Q You're aware that under the law of Tennessee,
19 which is binding, that anything that you think was
20 grounds for overruling the election that you had to put
21 in that contest or else it couldn't be considered by
22 this Board?

23 A I'm aware of that.

24 Q I feel for you but you lawyers -- I'm a
25 lawyer -- we have to go by the law, we have to honor

1 the law. So I sympathize with you about DUIs and all
2 that. I've been through the same thing myself.

3 Politics can be a rough business, can't it?

4 A Of course.

5 Q Well, you lost.

6 A At the end of the day, the numbers that were
7 certified, I had 19 votes fewer.

8 Q Alright. You lost. It's hard to lose. I've
9 been there, Mr. Barnes. I know what you're feeling.
10 It's hard to lose.

11 A Uh-huh.

12 Q And I'm glad you had an opportunity to talk
13 about these things but, like me, you got to go on.
14 There's another day. There's a lot of other things in
15 your future that you can accomplish.

16 I hope you'll use this hearing as an
17 opportunity to have gotten it all out of your system
18 and to go on. I think you may come to be a Senator of
19 Tennessee in the future and I hope you'll try to, but
20 you understand and what you're representing to this
21 Board, you want them to decide this case on the law,
22 don't you?

23 A That's why I have all these good lawyers
24 here, that's correct.

25 MR. ROCHELLE: That's all.

1 CHAIRMAN SASSER: Thank you. Anybody on the
2 -- do you want any redirect?

3 MR. BARRETT: No.

4 CHAIRMAN SASSER: Anybody on the Committee
5 have any questions for Mr. Barnes? Thank you,
6 Mr. Barnes.

7 MR. JOHNSTON: Mr. Chairman, and Members of
8 the Committee, that is our case.

9 The one thing that I did want to make sure of
10 is that included as Exhibit A to the brief that we
11 submitted, was a voter analysis sheet and that is also
12 part of our case.

13 A SPEAKER: Can you refresh us where that is?

14 MR. JOHNSTON: It should be at the very back
15 of the brief that we submitted in support of the
16 contest.

17 A SPEAKER: The original brief?

18 CHAIRMAN SASSER: The last page. The
19 document is entitled Tim Barnes' Brief in Support of --
20 it's the last page, very last page.

21 Thank you, Mr. Johnston. Mr. Rochelle.

22 MR. ROCHELLE: First off, for the record, if
23 I could ask in regard to the response that we filed, we
24 have exhibits, if we can go over those quickly.

25 Exhibit A is the application to vote of

1 Michael Biggs. He voted in the Republican Party and
2 stated he wanted to vote in the Republican Party.

3 Exhibit B is the application of Lenore
4 Meriweather. Her application to vote shows that she
5 voted in the Democratic Party, notwithstanding
6 Mr. Walker's statements that she couldn't find Barnes
7 and Kurita on the ballot.

8 Next is the application to vote Exhibit C of
9 Lynnette Walker. Shows that she voted or filled out
10 her application to vote as Republican.

11 Next is the application to vote of James W.
12 Walker, Jr. but is signed Wesley Walker. Shows that he
13 filled out his application to vote Republican.

14 Exhibit E is a compilation of the signature
15 book. That's the poll books they call it you have to
16 sign after you've taken your application for vote. You
17 take it to the next lady on. On Page 19 is the
18 signature of Mr. Biggs, verifying that he wants to vote
19 in the Republican Party.

20 On Page 29 the signature of Nancy Burchett,
21 showing that she says she wanted to vote in the
22 Republican Party.

23 On Page 113 is the signature of Debra Jones
24 showing that she voted in the Democratic Party as she
25 stated. Actually, she stated she couldn't find the

1 names on the Democratic ballot.

2 Lenore Meriweather shows she voted, you can
3 barely tell it, but it does have a click there besides
4 Democrat. Wesley Walker, and Lynnette Walker, both on
5 Page 262, signed that they wanted to vote in the
6 Republican Party.

7 Next is an Attorney General's opinion that
8 deals with a jurisdiction issue that we filed with the
9 Board that your lawyer will have us discuss, either
10 one.

11 Next is the application to vote of Debra
12 Jones, Exhibit G, showing that she voted in the
13 Democratic -- wanted to vote in the Democratic primary.

14 Next is Exhibit H. The first page is just
15 trying to show you where it was located on the front
16 page. If you look over here at the right down toward
17 the bottom it says Kurit, K-U-R-I-T.

18 If you'll look on the second page, I put an X
19 beside it where the newspaper said Kurita and
20 Republican challenger Tim Barnes, Clarksville attorney.

21 Next is Exhibit I which is the application --
22 excuse me, it's the voter card of Jesus Quiles which
23 shows that he was supposed to be living at 3125 Holly
24 Point and that that was in the 20th voting district.

25 Notice what was one line through is that he

1 had previously been registered since 2002 in the 20th
2 District. He didn't change voter places. This was the
3 fella that showed up at a precinct called Sango.

4 The next exhibit is, so you'll have them
5 available for you to look through is the specific
6 statues that we referred to in regard to how to
7 challenge a voter, how to keep Democrats out of
8 Republican -- how to keep Republicans out of Democratic
9 Party primaries and likewise in the reverse.

10 Now, if it's alright with you, Mr. Thompson
11 and I are going to read into the record portions of the
12 transcript of the interviews that were done with
13 election workers, and if it's alright with you, we'll
14 just alternate to save our voices on things.

15 CHAIRMAN SASSER: It might be helpful if we
16 could get the transcript posted on the overhead if you
17 have an extra copy.

18 MR. ROCHELLE: I can give you the testimony,
19 page number.

20 CHAIRMAN SASSER: Okay. This will be in your
21 --

22 MR. ROCHELLE: It's in the argument. It's
23 the only place we could put it.

24 CHAIRMAN SASSER: If I may address counsel.
25 Members, we can follow along if I understand correctly

1 in the reply argument filed on behalf of Senator
2 Rosalind Kurita, correct?

3 MR. ROCHELLE: Understand why we're doing it
4 this way. We could give you each 196 pages to read but
5 the transcript only got to us yesterday morning. We
6 didn't get started on that until about 10:00 or so and
7 so this was the only way really we could get it to you
8 where you weren't having to read forever.

9 CHAIRMAN SASSER: Mr. Rochelle, I'm sure your
10 questioning reads like a novel. We're very pleased
11 that you gave it to us on that form.

12 MR. ROCHELLE: Page 70, the testimony of
13 Margaret Pace. Page 70.

14 MR. BARRETT: Page 5?

15 MR. ROCHELLE: Let me sort of set what
16 happened first. On Tuesday, September the 9th, all the
17 attorneys and the parties, including Mr. Phillips from
18 the party, spent over four hours interviewing various
19 Montgomery County election officials and then we went
20 through each one of these allegations that Mr. Barrett
21 has presented something about.

22 The first one was the Jaycee Fairgrounds
23 polling location. If you'll remember, they submitted
24 an affidavit from four voters, one voter Michael Biggs,
25 said he told election workers he wanted to vote in the

1 Democratic primary but was given a Republican ballot.

2 The exhibits we just filed shows that he
3 shown as having voted in the Democratic primary,
4 notwithstanding the affidavit.

5 Election documents -- excuse me. I'm in
6 error. There election document shows that he voted in
7 the Republican primary and that's what the document
8 showed where he was.

9 The other three -- I'm on Page 4.

10 The other three voters, Meriweather,
11 Walker -- and Walker alleged that Margaret Pace told
12 them that Barnes was a Republican and was telling
13 people that all day. They didn't put anything in there
14 about the interviews in their brief even though those
15 interviews were conducted before they filed their --
16 before Mr. Barnes' brief was filed. Just basically
17 ignored it.

18 I'm on Page 5. This is the testimony of
19 Margaret Pace, Page 70. Mr. Rochelle:

20 Q "I believe you were sitting next to Sheila
21 Edmondson?

22 A Yes, I was.

23 Q At some point during the day Ms. Edmondson
24 said you made a mistake?

25 A I did.

1 Q And I want you to tell us now about the
2 mistake, what happened, who was there, what you did
3 about it, anything else that we ought to know to help
4 us understand the situation."

5 I hope you'll understand an unusual situation
6 in that all the lawyers were there taking, doing this
7 interview. We had never talked to the lady before but
8 it's being recorded.

9 "I misspoke. I was stressed. The gentleman
10 in line was already agitated, was extremely loud,
11 extremely rude because the information that was posted
12 there, he knew he was going to have to choose between
13 Democrat -- the Democrat and Republican and he did not
14 intend to do that."

15 Next, Page 71. I guess I'm continuing on
16 here. This is by Ms. Pace. "He was already agitated.
17 I was already apprehensive. He was in the line. He
18 was loud and complaining. I had already scanned the
19 line to see if we had a uniformed officer in the line
20 because we had several of them because he appeared to
21 me to be under the influence. When he came in the
22 line, he and the female that was with him were both
23 upset because she kept saying that if he was going to
24 have to register as a Republican or a Democrat, she
25 wanted to be locked in as an independent because that's

1 what she was. And I asked him persistently to go back
2 and look at the two ballots that had been posted to
3 choose a party. He refused to do that, saying he did
4 not want to go in and be locked in or locked under one
5 or the other. He wanted to have a choice. And then
6 because it was causing a scene and because of his
7 rudeness and his loudness and because our line was
8 blocked, I tried to give a quick example, which was my
9 mistake. It was a poor choice. And the quickest one
10 in my mind was the most hotly contested race in the
11 county that it was between Kurita and Barnes. Then I
12 realized after I said that, and it just came out -- I
13 did say -- I don't deny that I said Tim Barnes is a
14 Republican. I knew that they were both on the same
15 ticket, just as Joe Biden knew the other night in his
16 acceptance speech that George Bush was not the
17 candidate, that it was McCain. He started immediately
18 saying Freudian slip. And I made my Freudian slip.
19 Sheila was sitting on my right. She corrected me. I
20 corrected and apologized. And an attractive back lady
21 in the line behind them very rudely started saying over
22 and over Tim Barnes is no Republican, Tim Barnes is no
23 Republican. I made a mistake. I corrected it and
24 three people corrected it. He went on through the line
25 and no more complaints until he cast his vote and then

1 he was angry because he could not find the name on the
2 -- Mr. Barnes' name on the ballot. He could have
3 changed his party -- we did change others -- if he had
4 asked but he waited until he cast his vote and then he
5 complained.

6 Q Was this Mr. Walker?

7 A Yes, Wesley Walker."

8 Next.

9 Q "If I might ask you one or two more things.

10 In regard to Mr. Walker, did I understand you
11 to say that he was boisterous?

12 A Yes, he was, certainly.

13 Q Did I understand you to say that he appeared
14 to have been drinking? MR. BARRETT: No, she said he a
15 he appeared to be under the influence. That's what she
16 -- MARGARET PACE: Seemed to me because he was
17 inappropriately loud at a voting precinct. It might
18 have been all right at a bar or a national football
19 game or something -- National League Football game.
20 But in a voting precinct he was unusually loud and
21 outspoken about having to choose a party."

22 Mr. Rochelle:

23 Q "Would you describe his tone as belligerent?

24 A Very agitated. He was not going to -- he was
25 not going to sign in or wanted to be locked in, one or

1 the other, it was his right not to do that. And she
2 kept insisting, the lady, that if he was going to be
3 locked in, she wanted to be locked in as an independent
4 because that's how she always voted.

5 Q I did hear you right, that you were concerned
6 enough about his behavior that you looked to see if you
7 had a uniformed officer there?

8 A Yes, because people go into a rage
9 unprovoked, seems like nowadays, especially if they're
10 under the influence.

11 Q I'm sorry. Your answer was yes?

12 A Yes."

13 This is Sheila Edmondson, and this is my
14 question:

15 Q "Now, your role as a registrar, where were
16 you physically seated in regard to when a voter walks
17 in the door?

18 A Margaret Pace, myself" --

19 MR. JOHNSTON: What page are you reading from
20 in the transcript?

21 MR. ROCHELLE: On the transcript, 50.

22 Q "So you were sitting right next to Margaret
23 Pace.

24 A Yes, sir.

25 Q I would just ask you the first question.

1 A Okay.

2 Q Did you see or hear or observe Margaret Pace
3 do anything that day that you did not think was
4 appropriate for the voting place?

5 A I don't know if I put in it those words but
6 yes, she made a mistake that day.

7 Q Okay. Tell me about the mistake.

8 A A man and his wife came up, asked which --
9 Democrat or Republican that Kurita was in. She told
10 him. It was the wrong one. And I heard her because
11 I'm sitting right next to her, right beside her. I
12 told the man -- I told Margaret, that is not correct.
13 The man is standing right in front of me, his wife is
14 right in front of Margaret. Both right here
15 (indicating). He heard me say that. Margaret said,
16 okay. Go back to the sample ballot, go look at the
17 sample ballot. I don't think he ever left the table at
18 all, him or his wife. Then I heard a lady behind his
19 wife saying yes, that's correct, said that's wrong,
20 she's not in that party. And that's all -- from there
21 on he filled out his thing and went to his book.

22 Q And do you know what their names were?

23 A I don't. I do from the last time I was here.
24 They were a Walker, I think was their last name. But
25 no, I didn't know them.

1 Q You didn't know them that day but you
2 subsequently discovered they were Walkers.

3 A Couldn't tell you the first name, don't know
4 that.

5 Q So Ms. Pace makes a mistake and tells them --
6 was it that Kurita was in the Democratic primary or
7 Barnes was in the Republican primary?

8 A He asked about Kurita.

9 Q He asked about Kurita. And she told him that
10 Kurita was in the Democratic primary?

11 A Uh-huh.

12 Q Do you know what primary he chose to vote in?

13 A Well, I would say it was probably the one
14 that Kurita was in. I don't know whether he was voting
15 for her or against her but they were both in the same
16 party so it had to be.

17 Q Did you hear Ms. Pace tell them -- well, tell
18 me -- repeat again for me what you heard Ms. Pace say.

19 A She told him -- he asked what party Kurita
20 was in. She told him the wrong party.

21 Q She told him Republican?

22 A Yeah, I guess. Republican. I said Margaret,
23 that's not right. Then, like I said, the man was
24 standing right there. And she says, okay, go look at
25 the sample ballot. But he never did go look at it.

1 And then I heard a lady behind his wife say, that's
2 correct, that's not the right party. So he got it
3 coming from two different -- in front of him and behind
4 him. But as far as I know, I never saw him leave the
5 table.

6 Q Alright. Was there any other incident that
7 day where any similar type of mistake was made by
8 Mrs. Pace?

9 A Not to my knowledge.

10 Q By anyone else at the voting place?

11 A No, sir."

12 Then move to Page 53, my question:

13 Q "Has your experience been that if a voter --
14 until they punch that confirmed button, if a voter says
15 I've made a mistake, I'm in the wrong primary, what has
16 been your experience as to the willingness of election
17 workers in your precinct to back him back out, put him
18 in the other primary if that's what he wants?

19 A They've done that before. I mean, you know,
20 I don't really deal with the machines at all. They're
21 behind us. I try to get my thing done when they can
22 punch in the right thing, you know, going into the
23 machines. But I know of one incident, I think it was
24 that day that somebody said, you know, this is not
25 right and they came back out, redid it and went back

1 in."

2 Page 56, my question:

3 Q "You've known Margaret Pace for a good while?

4 A Oh, yes. She was my daughter's second grade
5 teacher, 30 something years ago.

6 Q You believe her to be a person of high
7 character, good character?

8 A Yes.

9 Q Honesty?

10 A Yes.

11 Q Do you think she would deliberately try to
12 cheat Mr. Barnes?

13 A No, I do not. Never have seen her do
14 anything illegal or anything like that. She's just --
15 she's on top of things. She's very organized, you
16 know, and she just absolutely made a mistake that day.

17 Q When she made that one mistake and you
18 pointed it out to her that that was incorrect, did she
19 take the proper action to remedy her mistake?

20 A Yes."

21 I think we've moved to the testimony of Lena
22 Crouch which is Page 39 in your transcript, Page 10 of
23 our document.

24 Price, you want the read that one? Let Price
25 do it. I'll drink some water.

1 MR. THOMPSON: I'm going to be reading part
2 of Mr. Rochelle here. This is Page 10 of the reply
3 argument that we filed and it's Page 39 on the actual
4 transcript. First question from Mr. Rochelle to Ms.
5 Lena Crouch:

6 Q "Do you know a Lenore Meriweather,
7 Ms. Crouch?

8 A Yes, I do.

9 Q Did she make a complaint to you that day?

10 A If she did, I can't recollect that she did.

11 Q Specifically, she says that she complained to
12 you about Margaret Pace was telling people that Tim
13 Barnes was a Republican and you said, oh, she's been
14 doing that all day.

15 A I don't remember that.

16 Q Did you say that?

17 A No. If I did, I don't remember saying it.

18 Q Is there any circumstances where you might
19 have said that?

20 A No.

21 Q Did you know of any circumstance that day
22 when Margaret Pace directed anyone to vote in one
23 primary or the other?

24 A No.

25 Q Have you known Ms. Pace for a lengthy period

1 of time?

2 A Yes, I have.

3 Q What is your opinion as to her character and
4 truthfulness, honesty and reputation in the community?

5 A All good.

6 Q I believe I asked you, but let me make sure.

7 A Okay.

8 Q That entire day of election day --

9 A Okay.

10 Q -- did you see or have reported to you any
11 action of Margaret Pace that you do not think was
12 appropriate for the voting place?

13 A No."

14 Now we're moving to Page 46 of the actual
15 transcript, still on Page 10 of the reply. This is Mr.
16 Rochelle:

17 Q "There in the voting place, I'm trying to get
18 a feel for how things were physically. How close would
19 you have been to where Margaret Pace was located most
20 of the time?

21 A About from -- well, not as close as I am to
22 her (indicating). In between me and that table right
23 there (indicating).

24 Q What is that, about six feet?

25 A Yeah, I guess you'd say about like that.

1 Wasn't a long distance.

2 Q Did you hear Margaret Pace that day instruct
3 anybody as to whether they should vote in the
4 Democratic primary or Republican primary?

5 A No, I didn't.

6 Q Did you hear her make any comment about
7 Mr. Barnes as to whether he was a Democrat or
8 Republican or what primary he was?

9 A No, I didn't.

10 Q Did you hear her do or say anything that day
11 that you did not think was appropriate for the voting
12 place?

13 A No, I didn't.

14 Q How long have you been an election official?

15 A Oh, it's been a long time because -- I know
16 over 20 years. I've been there a long time."

17 The next testimony is of Ernst Kugler.

18 MR. JOHNSTON: Before he moves on from that,
19 may we read some more of that specific person's
20 testimony or how do you want to handle that?

21 CHAIRMAN SASSER: I have no problem with
22 that, remember though that this counts as your cross,
23 so to speak, from your time.

24 MR. THOMPSON: How much time do we have?

25 A SPEAKER: About 45 minutes, roughly.

1 MR. THOMPSON: What about Mr. Barnes?

2 A SPEAKER: Nine minutes thirty seconds.

3 CHAIRMAN SASSER: My understanding is that
4 Senator Kurita has 45 minutes, Mr. Barnes has 9 minutes
5 30 seconds.

6 MR. JOHNSTON: Very quickly, let me set this
7 stage here. You'll recall that this witness worked
8 right next to a Mr. Kugler. Mr. Kugler was the
9 gentleman who took Mr. and Mrs. Walker off to the front
10 part of the building and showed them the ballots after
11 they had voted. Questions by me:

12 Q "Can I ask just a couple of the last things
13 here?

14 A Okay.

15 Q You know Mr. Kugler; right?

16 A Yeah. The --

17 Q The gentleman who just left?

18 A Now, I'm not good on names.

19 Q But you recognized him?

20 A Yeah, I recognize him.

21 Q Do you remember Mr. Kugler that day, on
22 election day taking a man and a woman off to the front
23 door to show them the ballots and go over that?

24 Do you remember that?

25 A No.

1 Q You don't remember that?

2 A No. And he could have.

3 Q You worked on the machine; is that right?

4 A Yes, I did.

5 Q And which machine?

6 A I worked next -- the fourth machine.

7 Q No. 4?

8 A Yeah.

9 Q What machine did Mr. Kugler work on?

10 A On the fifth machine, the last one.

11 Q You were right next to him?

12 A I was in between him and the other lady."

13 Thank you.

14 CHAIRMAN SASSER: Mr. Thompson.

15 MR. THOMPSON: For the record, this next
16 witness is Ernst Kugler.

17 CHAIRMAN SASSER: Mr. Thompson, one second.
18 I think Chip has a question.

19 MR. FORRESTER: Would it be possible, Mr.
20 Chairman, to get some clarification of Mr. Johnston's
21 reading?

22 I'm not quite sure what context that's in.

23 MR. THOMPSON: I think when I read the next
24 transcript you'll understand.

25 MR. FORRESTER: I couldn't connect.

1 MR. THOMPSON: If he wants to clarify, that's
2 fine, too.

3 CHAIRMAN SASSER: I would remind both counsel
4 that responding to questions from the Committee is not
5 taking away from your time.

6 MR. JOHNSTON: You're about to hear some
7 testimony from Mr. Kugler. Mr. Kugler was a machine
8 operator at the Fairgrounds precinct. He worked on the
9 machine next to the woman that you just heard from,
10 and, of course, the testimony is about how she didn't
11 remember things.

12 We all know that Mr. Kugler actually took the
13 Walkers off when they complained that they couldn't
14 find Mr. Barnes' name after they had voted. She didn't
15 remember that, either.

16 MR. THOMPSON: Just to refresh the
17 Subcommittee's memory, Mr. Walker testified that after
18 he voted, he was taken by one of the voting machine
19 operators to the front of the building and shown where
20 the ballots were but when he -- in his testimony he
21 said he had already pushed the button that finalized
22 his vote so he could not go back and get a new ballot.

23 Okay. The testimony of Ernst Kugler. This
24 is on Page 11 of the reply argument and on the
25 transcript, it is Page 16. Mr. Rochelle:

1 Q "They call it the Fairgrounds?

2 A Right. It's the Jaycees' building at the
3 Fairgrounds.

4 Q And what is your position there?

5 A Judge operator.

6 Q You're an operator there.

7 A Yeah, the machine operator.

8 Q During the day, did you have any contact with
9 one Michael Biggs?

10 A I don't know the name.

11 Q Did you have any contact with Wesley or
12 Lynette Walker?

13 A I don't know their name, either.

14 Q At anytime during the day, did you have
15 someone that you might not have known --

16 A Well, the thing is most of the time the
17 registrar's set-up the piece of paper. When they walk
18 up and hand me the piece of paper, I look to see for
19 the registrar's initials and I look to see which of the
20 parties are checked. I ask them they're voting
21 whatever is checked. That's it. I mean, the name and
22 everything, really, we don't have any use for it at the
23 machine. It's on the sheet, but I'm looking at one
24 sheet after another.

25 Q You just take whatever the little application

1 to vote --

2 A The registrar's have set-up paperwork for
3 them to sign, everything else. All I need to do is to
4 make sure that the registrar's initials are on there
5 and I confirm what party they are voting for so I know
6 which way to trigger the machine.

7 Q Was Margaret Pace at this precinct?

8 A She was the Officer in Charge, yes.

9 Q Did anyone complain to you during the day
10 about Margaret Pace?

11 A I did not have a direct complaint as such. I
12 heard from somebody else in the building that someone
13 was saying that the lady in the red coat had given the
14 wrong information out. I did not get a word -- I think
15 I -- I believe I had the individual, yes.

16 Q Who is that?

17 A I honestly can't tell you the name but he was
18 a large gentleman, a little bit bigger than I was,
19 about your build. There was actually two of them. I
20 had a lady come to the machine -- and, again, like I
21 say, I don't know their name. But she walked up and
22 before I could ask her which party she was voting for
23 she informed me she voted all the time, wanted to know
24 where the machines that had the little clickers on them
25 were at. I told her as far as I knew we had gotten rid

1 of the those two Presidential elections ago. Anyway,
2 she went in, and checked Republican on her slip. I
3 confirmed that was what she wanted. That's the way the
4 machine was triggered. She went in, voted, came back
5 out. The machine had showed that she had registered
6 something. I think about two other people later, a
7 tall, heavy-set gentleman showed up. He went and
8 voted. Same thing. He had Republican written down
9 there. He voted. When he started talking to me, he
10 started talking about not finding Kurita and Barnes'
11 name on it. When I glanced at the machine he had
12 already processed it and had it and hit the red button.
13 There was nothing I could do about it. In conversation
14 with him, he wanted to know how do you find out these
15 things? So I physically went back to the front door
16 with him. This is where the lady that I had came into
17 it because she went over with us. She was staying
18 right on his elbow. I assumed that they were together.
19 I showed them the ballots on the front door. I showed
20 them how each one of them looks like the exact page in
21 the machine and they can check it on the way in. We
22 also had them on the wall where they line up for the
23 machines. But the last election --

24 Q And those were there -- those sample ballots
25 were there?

1 A The ballots are there on the wall. There's a
2 Republican one and Democrat one. They have a separate
3 page for each one of them, just the same way you would
4 see in the machine.

5 Q Do they say anything about Margaret Pace?

6 A To me, no. Like I say, I heard from somebody
7 else later that somebody was talking about Margaret
8 Pace. Now, actually, somebody was talking about the
9 lady in the red coat who happened to be the only one
10 was Margaret Pace. Now, as far as Margaret Pace goes,
11 the physical aspects of the machinery was that I was
12 behind probably 10 feet or less. The way the machines
13 are lined up behind the registration tables, I was off
14 to her left. Normally I would have been to her right
15 if I had the third machine. But we had a new machine
16 operator and we put her in the middle in case she had a
17 problem, one of us could catch it real quick. Normally
18 I could hear about 50 percent of what goes on at that
19 table. The rest of the time I'm either not paying
20 attention or something.

21 Q Did you hear her advising anybody about --

22 A I heard her talking to quite a few people.
23 She sets the paper out, they fill out their name and
24 their address on it. When they're working, she'll have
25 one of them at the end of the table, one here, one

1 there, (indicating). And I've seen at least four using
2 the table at the same time while they're filling the
3 slip out. Usually she's talking to two or three of
4 them at the same time. And after she's finished with
5 the slips -- they finish with the slips and she directs
6 them down to the registrar that's got the book to
7 confirm they're being logged in.

8 Q Okay. So it's not a situation where she
9 would tell somebody, Tim Barnes is on the Republican
10 ballot, without a bunch of other folks hearing her?

11 A As far as I'm concerned, probably not.
12 Because we had --

13 Q Did you ever hear her say that to anyone?

14 A Pardon?

15 Q Did you hear Margaret Pace say that to
16 anybody?

17 A No, I never heard her say anything like that.
18 I've never heard anybody say that -- down there we're
19 all old-timers, we're a whole bunch together. I never
20 heard anybody tell somebody that -- something that --
21 first off, you don't usually tell anything to them. We
22 direct them back -- if they want to question them, we
23 direct them back to the ballots on the door.

24 Q Did you hear Margaret Pace occasionally do
25 that on election day?

1 A I heard her do that several times and I've
2 done it several times. In fact, one individual was
3 logged in Republican and stepped back from the machine
4 and asked where it was. I said, you had to register
5 Democrat. He said well, he had made a mistake. I
6 called Margaret over. And he had not triggered the
7 machine yet so we were able to back him back out, and
8 initial the sheet off that he changed it from
9 Republican to Democrat, and then I re-triggered the
10 machine for Democrat and he voted Democratic."

11 Now we're moving to Page 35. This is Mr.
12 Rochelle:

13 Q "If he had asked you at that time when you
14 asked him do you want to vote Republican because that
15 is what you saw on his application to vote -- what if
16 he had said I only want to vote in the Kurita-Barnes
17 race?

18 A Well, I would have informed him that he had
19 the wrong -- and he needed to go back to the registrar
20 and change it.. Since he wasn't in the machine yet, he
21 could just go back to the book.

22 Q From your experience with working with
23 Ms. Pace over all the years, have you found her to be
24 that type of person that if someone had a problem or
25 had an objection, you would work to try to find a

1 solution?

2 A If they came to her with a problem, she would
3 find a solution, yes. I've been familiar with Ms. Pace
4 for many, many years.

5 Q Have you ever known Ms. Pace to try to steer
6 people either to a Republican primary or a Democratic
7 primary or try to have any clear impact inside the
8 voting place?

9 A No, I do not. And I almost always work
10 directly behind her.

11 Q Do you believe she's a lady of fine
12 character?

13 A I do."

14 CHAIRMAN SASSER: Mr. Rochelle, would this be
15 an appropriate point to take a five minute break?
16 Hearing no objection, we're going the take a five
17 minute break. Limit it to five minutes.

18 Let's get back here and continue our work.
19 It is five minutes after two. We're going to reconvene
20 at ten minutes after two.

21 (2:08 p.m., a recess was had until 2:18 p.m.)

22 MR. JOHNSTON: Mr. Chairman, Members of the
23 Committee, continuing on with the testimony of
24 Mr. Kugler that we just heard from, I'm reading from
25 Page 24 of the transcript:

1 Q "Did you hear her" -- that's Mrs. Crouch --
2 "complain any or did she report anything to you about
3 Margaret Pace?

4 A No.

5 Q Or about anybody trying to misdirect voters?

6 A No. I had nobody in the place complain about
7 that to me. There were a couple of the registrars that
8 made a comment to me they had heard it but I had not
9 firsthand heard it, no."

10 Thank you.

11 CHAIRMAN SASSER: Thank you, Mr. Johnston.
12 Mr. Rochelle.

13 MR. ROCHELLE: It's been suggested I try to
14 add a little bit more tone into the delivery here. I'm
15 hesitant to do that. Mr. Barnes also submitted
16 evidence, or he submitted evidence of Montgomery County
17 election officials potentially misdirected folks to the
18 Republican primary, one Nancy Burchett, a voter who
19 supported Barnes at the Woodlawn polling place.

20 While Burchett alleges in her affidavit that
21 she asked to vote in the Democratic primary election,
22 documents showed that Burchett voted in the Republican
23 primary ballot.

24 That's shown as Exhibit E to the Kurita
25 Exhibit.

1 She stated that she is told by an election
2 officials that Barnes was on both the Republican and
3 the Democratic ballots. Testimony from the head
4 election official of the Woodlawn voting or polling
5 location, Milan Lewis, refutes these allegations.

6 I'm on Page 15. Does anybody want to know
7 what page in the transcript I'm at? Page 7, you can
8 find it on here:

9 Q "Mr. Lewis, I'm Bob Rochelle and I represent
10 Senator Kurita along with Mr. Thompson here. You are
11 at the Woodlawn precinct. The only thing I know that
12 is alleged about the Woodlawn precinct was something
13 about a Nancy Burchett. Do you know anything about a
14 Nancy Burchett?

15 A No.

16 Q She stated that she was told that Tim Barnes
17 was going to be on both ballots that day. Did you hear
18 anything like that out there?

19 A No.

20 Q Is there anything you know about the
21 proceedings on election day that you think would be
22 relevant to us?

23 A Not really. We put both the primaries on the
24 wall, the sample ballots, and explained to the people
25 when they came in the door where you could look at them

1 and we did advise them that it was a primary so
2 everybody understood what is going on.

3 Q What was your position on election day?

4 A I was the Official Officer over the precinct.

5 Q So you were the top dog?

6 A I guess you would call it that. I was the
7 one that got the most headaches.

8 Q Well, did you report to Vickie, the
9 Administrator of Elections, any irregularities or other
10 concerns that day about anything that happened at the
11 election?

12 A I had no complaints, sir. We have an officer
13 that if there's a problem as far as the voting is
14 concerned, we would send them to her. And if she
15 didn't have it in the book, we would call Vickie. But
16 we didn't have any complaints about it.

17 Q People ask are you a Democrat or Republican
18 or do you ask which primary you want to vote in?

19 A When you come in the door there's a table set
20 there. It's set for Republican or Democrat. They give
21 them the sheet of paper and they tell them you have to
22 decide whether you're Republican or Democrat in the
23 primary.

24 Q Well, do they ask you to declare whether
25 you're a Democrat or Republican or ask you to declare

1 which primary you want to vote in?

2 A I don't right understand what you meant. On
3 the registered paper it's got Republican or Democrat.
4 You check one or the other. That's what the girls tell
5 them, check whether or not you're voting Republican or
6 Democrat."

7 At the Outlaw polling location, Mr. Barnes
8 submitted evidence that voter machine malfunction at
9 the Outlaw polling location prevented his supporter,
10 Debra Jones, who you heard from, from voting in the
11 Democratic primary.

12 This evidence was explained and refuted
13 through the testimony of election officials Aspen
14 Landry and her husband Tom Landry, who were the only
15 two machine operators at the Outlaw polling location.

16 My question:

17 Q "You said you've read the affidavit of
18 Mrs. Jones and you think you know what she is referring
19 to.

20 A Uh-huh.

21 Q Why don't you tell is in your own words what
22 you know about it.

23 A Okay. So the little cards -- do you know how
24 machines work? There's a card that each time somebody
25 comes up to the machine, you see on their little white

1 sheet that they've brought up if they have chosen --
2 you know, which party they've chosen to vote in. I put
3 my card in to start the machine, to activate it and it
4 gives me a choice. And I read it outloud to them,
5 you've chosen Republican, and I would push the
6 Republican button or the Democratic button.

7 Well, it's not like a debit card. You don't
8 just slide that card in, pull it out quickly. If you
9 do, it doesn't have time to read the chip and it won't
10 give you the option to choose Democrat or Republican.
11 It picks it for you randomly. And so it happened. I
12 pulled my card out -- this is the first year I've done
13 this -- and it skipped the test. It didn't let me
14 choose. All of a sudden it was just -- her ballot was
15 pulled up. I didn't know if it was this woman because
16 it happened three different times.

17 So when the ballot came up, just ironically
18 it was the correct party that she had chosen so we went
19 on with it. And I didn't do anything because it was
20 the right ballot and I didn't understand why it did
21 that yet. And it did it again. And then on the third
22 time when it did, I finally went and talked to the
23 Special Clerk. I said, sometimes it doesn't give me
24 the option to choose. So she gave me the phone and I
25 called the tech. Then the tech explained to me. He

1 said, well, it's not like a debit card, it has a
2 microchip on the back. You have to put it in, give it
3 time to read it and then you can pull it out. Sure
4 enough that was the problem. So sometimes I would
5 explain that to the people -- I didn't explain the
6 first three times because I didn't know what was wrong.
7 So I just said oh, it didn't give me a choice, but, you
8 know, here is the right one.

9 Now, on the third one I put in it and I got
10 frustrated because it didn't give me the choice. This
11 is right before I talked to the Special Clerk, and I
12 called the tech. So I told my husband. Said, Tom,
13 this is the third time this has happened, it didn't
14 give me a choice, you know, I said -- pulled it up and
15 I said let me go talk to somebody. This woman was
16 standing there and she didn't know what was going on.
17 Maybe this was the Debra because this is the one -- I
18 finally vocalized it to somebody and Tom said, well, so
19 she doesn't have to wait, my machine is open, she can
20 come over and use my machine while you figure it out.
21 I said let me at least look at the machine and see.
22 And it happened to be the right one. So she used it.
23 I mean it was the correct -- everybody that used my
24 machine voted for the party that they wanted to vote
25 for. But there was some confusion on that because my

1 card -- I didn't understand that you can't put it in so
2 quickly and remove it right away. You have to give it
3 a minute. But everybody voted for the party that they
4 wanted to vote for."

5 Remember Debra Jones thought, notwithstanding
6 all her certifications about the Democratic Party, she
7 thought she voted in the Republican Party. She didn't.

8 Q "When you say that, do you know that because
9 you were looking at their application to vote where
10 they had marked either Democrat or Republican?

11 A That's correct.

12 Q And I take it you pulled it out quick, then
13 it put in the Democratic primary.

14 A It must have. It was the correct one.
15 Because when the ballot comes up it tells you on the
16 upper right hand -- left hand portion of the screen
17 which ballot has been pulled up. So you can check
18 right there, you know which ballot it is because it
19 tells you.

20 Q It tells you which one they're voting?

21 A That's correct.

22 Q And you can compare what is on the machine
23 with what it says on the application to vote --

24 A That's correct.

25 Q -- that you have in your hand?

1 A That's correct.

2 Q And so on all three of these instances where
3 you pull the card out --

4 A Yes.

5 Q -- on all three of them, whichever primary
6 popped up, it was the primary that was on the
7 application to vote?

8 A Exactly.

9 Q So if Debra Jones was one of those three, she
10 would have heard you say something like this machine is
11 not working or something like that.

12 A That's correct. And we had several people
13 complain because they didn't see the person on their
14 ballot that they wanted. And we had to explain to them
15 this is a primary and they were only going to see the
16 Republican nominees or the Democrats, you know so lots
17 of them didn't understand that that's what they were
18 coming to vote for. So maybe she was confused on that.
19 She heard me say the machine wasn't working properly
20 and she didn't get to see the name, so perhaps she got
21 confused. I don't know.

22 Q Okay. But on these three instances -- which
23 I take it were the only three instances at the Outlaw
24 precinct when this happened?

25 A Yes.

1 Q On those three instances, all three of them
2 voted in the primary that they had chosen on their
3 application?

4 A That's correct.

5 Q In the affidavit it said the woman working
6 the machine said she could not get Democrat to come up
7 and I would have to vote Republican. You were the only
8 woman machine operator?

9 A That's right.

10 Q Did you state to her you could not get
11 Democratic to come up and she would have to vote
12 Republican?

13 A No, sir."

14 This is the testimony of Tom Landry. We did
15 have a little spree where we had to talk about Coach
16 Landry. I wasn't going to repeat it to you.

17 My question:

18 Q "Your wife has explained to us about an error
19 --

20 A In the machine.

21 Q Where she was not keeping the chip down long
22 enough?

23 A Right.

24 Q It sounded from her testimony like you two
25 were sitting close to each other?

1 A Yeah. We were about five feet apart, ten
2 feet.

3 Q Did she voice concerns to you as to what was
4 happening?

5 A Yeah, she explained it as it happened.

6 Q Did she make statements to you about whether
7 she had any instance where the machine wouldn't --
8 didn't come up with the primary that the voter wanted
9 to vote in according to their application?

10 A Yeah. And, actually, on one occasion I
11 actually stepped in. As the voter -- there was the
12 question and the voter stood back and I kind of helped
13 her figure out the problem. Then we realized, like I'm
14 sure she told you, that it happened to be the correct
15 primary list. And then we let the voter in. Oh yeah,
16 I was intimately involved as well.

17 Q Okay. So for all three -- she said there
18 were three instances. Were you aware of all three
19 instances?

20 A Yeah. I don't remember in what order they
21 happened but I remember that either -- there was the
22 one I told you about where I was part of it beforehand
23 and the other two at least afterwards, if not, during a
24 problem.

25 Q On all three of those can you verify that the

1 primary that came up on the machine -- even though she
2 pulled the card out too fast, the primary that came up
3 on it was the primary that the person had chosen on
4 their application to vote?

5 A That's what I remembered, yes. But she told
6 me I wouldn't -- I didn't see the voter registration
7 card -- I'm not sure what you would call it. But that
8 is what she said to me. That's from what I remember.

9 Q Alright. You were there listening. Did you
10 hear her tell anybody about -- there was a Debra Jones
11 where Mr. Barnes filed an affidavit that said the woman
12 operator told me I couldn't -- the machine wouldn't let
13 me vote Democrat, I had to vote Republican?

14 A I don't remember that, no."

15 Mr. Barnes submitted one of his supporters,
16 Peter Napolitano had difficulties in obtaining a
17 primary -- no party primary ballot at the St.
18 Bartholomew (sic) polling location.

19 He alleged in his affidavit that he first
20 requested to vote in the Republican primary but having
21 going through several screens on the voting machine
22 decided he would rather vote in the Democratic primary.
23 Through the assistance of election officials, he admits
24 he was eventually able to vote in the Democratic
25 primary.

1 Nevertheless, he alleged that when he was
2 asked to change his primary choice, election officials
3 initially advised him it's too late. This allegation
4 is refuted by the following testimony of machine
5 operator Michael Ponder, who was at the St. Bartholomew
6 (sic) polling location and believes he may have
7 assisted Mr. Napolitano.

8 Q "This was a fella that came in and said I'm a
9 Republican, he signed his application to vote?

10 A I don't remember that. I remember -- this is
11 my second time to work at the precinct. I worked
12 another precinct prior. But there was an experienced
13 person in front of me. And she said, even though they
14 marked Republican or Democrat or Independent, whatever,
15 you need to -- I always ask them again so that they're
16 sure. So I did everybody that day, so you're voting
17 Republican, so you're voting Democrat today? So then I
18 go ahead and punch the card in. If he asks me -- or I
19 ask him. I mean, whatever it was, Republican or
20 Democratic. I don't know which one it was. I would
21 ask them.

22 Q Basically what happened was a fella comes in
23 and signs up for one primary, then he gets to you he's
24 marked some of his ballots on the ballot but he hasn't
25 cast a vote yet, pressed the red button, and he changes

1 his mind and decides he wants to be a Democrat that
2 day. And you had one of those instances?

3 A Yes.

4 Q And what you did was to go back and sort of
5 backtrack everything and let him sign he wanted to vote
6 in the other primary, let him sign again the list that
7 he wanted to vote in the other primary, and let him
8 bring that new application to vote to you with a
9 different primary marked on it and you let him vote in
10 a different primary?

11 A Yes. I called Karen and she did that. I
12 didn't do that all -- I didn't do that all of that.

13 Q And is that what you found, that if a voter
14 will let you know there's a problem or they want to
15 backup on their choices earlier made, that before they
16 cast that vote, that you will work with them to try to
17 find the solution?

18 A Oh, yeah. Before they cast that vote.

19 As best I remember, I said we have a person
20 here who wanted to vote for somebody but they marked
21 the wrong ticket but they have not hit the red button
22 to cast their vote. Can anything be done? One person
23 says yes, I think you can. And one person grabbed the
24 rules, or whatever, and we called Karen all at the same
25 time. And Karen came over there. They made the

1 decision, yes, what we'll do, he hasn't done that yet,
2 we can cancel that out, we'll go back to the
3 registration table. Sent him back over there, he
4 filled out the other party, he initialed where he had
5 struck out on the -- where he had struck out the
6 original party to vote for.

7 Q So your recollection is the two election
8 persons came over before Karen did, one was yay and one
9 was nay?

10 A Oh, I don't remember a nay. I don't remember
11 a nay. "

12 Remember Mr. Napolitano today was telling you
13 oh, we can't do anything. The testimony of these folks
14 is everybody was saying if you want to backup, we'll
15 help you back up.

16 Q "I thought you said one of them said you
17 could and one of them said you couldn't?

18 A No. If I did, I'm sorry. I didn't mean to
19 mislead you there. No, they were saying, can we do
20 something? Of course, I didn't know whether you could
21 or not. I presumed you could. I didn't know how to do
22 it, not knowing the process. No, I don't recall
23 anybody saying you could not do that. Obviously we
24 know you cannot do that after you hit the red button."

25 The Sango polling location is the failsafe

1 thing. He asserts that -- well, he said two supporters
2 in the last documents that he filed. There is no
3 evidence whatsoever about this Mrs. Quiles, and she was
4 not alleged in the original contest. We didn't know
5 about her until we got the last document from
6 Mr. Barnes' team. We're going to talk about him
7 anyway.

8 "We were improperly denied the opportunity to
9 vote at the Sango polling plate. Contestant presumably
10 supports this allegation with the affidavit of Jesus
11 Quiles in which affidavit there is no mention of
12 Mr. Quiles's wife.

13 Nevertheless, Vickie Koelman the
14 Administrator of Election, testified Mr. Quiles was not
15 a registered voter at the Sango polling location and
16 never had been to her knowledge.

17 Further, Ms. Koelman testified that if Mr.
18 Quiles had never lived in the Sango voting -- polling
19 precinct, then he would not have been entitled to a
20 provisional or failsafe ballot."

21 Ms. Koelman specifically testified as
22 follows: Here we go:

23 Q "As I understand it, Mr. Quiles was
24 registered in the 20th District?

25 A Yes, sir.

1 Q Which one is that?

2 A Currently Clarksville High School.

3 Q He was registered in 2002?

4 A Yes, sir.

5 Q And in 2007 he moved?

6 A That's correct.

7 Q But he moved within the 20th precinct?

8 A That's correct.

9 Q And the next we knew of him was in August of
10 '08 where he shows up at the Sango precinct.

11 A I don't know that.

12 Q You don't know that he showed up at the Sango
13 precinct?

14 A No, sir.

15 Q You know in the affidavit is filed by
16 Mr. Barnes --

17 A That's correct.

18 Q -- it's alleged that he showed up at the
19 Sango precinct to vote?

20 A (Witness moves head up and down.)

21 Q Of course, if he shows up there and they
22 don't have him on their list -- if he had just gone to
23 the voting place on his registration card, would he
24 have been able to vote?

25 A If that's where he still lives, yes, sir.

1 Q As far as you know, your records don't
2 indicate that he has filed any other change of address?

3 A No, sir.

4 Q Let me go back to Mr. Quiles for a minute.
5 Now, I I have on your record that he registered in
6 2002, he notified you December 31st. I think that"--
7 "of '07. You listed his new address at 3123 Holly
8 Point. I see nothing else. Does that mean he's not
9 made any contact with you about changing his address
10 from 3123?

11 A That's correct.

12 Q Have you had any contact from Mr. Quiles with
13 regard to his inability to vote on election day?

14 A No, sir.

15 Q Are you aware of whether or not -- I take it
16 other employees are here. You can't be here all the
17 time, although I'm sure you're here most of the time.
18 You have other employees. I take it they're aware of
19 this contest. I take it they're probably aware of
20 Jesus Quiles. Have any of your workers reported
21 anything at all about Mr. Quiles?

22 A I won't say my staff is aware of all the
23 allegations or of all of the -- with this contest. But
24 that copy I made for you was made after you arrived
25 here today. And that card would reflect if we had

1 updated his address and it does not.

2 Q Have any of your employees notified you or
3 informed you of any contact with Mr. Quiles with this
4 office?

5 A No. That's what I'm trying to say. That
6 record right here would have reflected had we updated
7 his address.

8 Q Well, I'm just talking about any contact at
9 all with the office in regard to election day or change
10 of address, any type of contact with Mr. Quiles with
11 this office, have you had anything reported to you?

12 A No, sir.

13 Mr. Johnston: May we get a copy of that by
14 the way?

15 Mr. Maness: Sure.

16 Q Is there any record at all that he showed up
17 at the Sango precinct other than his affidavit?

18 A I do not have anything to reflect that he
19 showed up there."

20 Mr. Barrett:

21 Q Now, if I walk in a precinct, show an I.D.
22 card and ask for a ballot, they are going to first
23 determine if I'm a register voter, right?

24 A If I could explain the procedure. When you
25 first enter the precinct, you'll go to the application

1 table wherein you will fill out your application. Once
2 it's complete, then you'll be sent to the table with
3 the signature book or the poll books on them for your
4 letter of the alphabet. At that point, we will
5 determine if you are a registered voter in that
6 precinct, if your address matches and where you go from
7 there.

8 Q Suppose my address doesn't match my
9 application?

10 A What's in the book doesn't match what's in
11 the application, then you are sent to what I call a
12 Special Clerk. I have one, possibly two in every
13 precinct. And that person is trained to have you fill
14 out a failsafe change of address form at which time a
15 phone call is made into the election office. We will
16 take that information that the person has placed on the
17 form and we will precinct them into the proper precinct
18 with their new address. And at that point we will say,
19 okay, you're in the same -- if they stayed in the same
20 precinct, they get to vote. You mark a certain thing
21 on your application and then you authorize them to vote
22 there. Or if they have been precinctd to a different
23 precinct, we tell them that they will no longer get to
24 vote there, you will send them, you know, to another
25 precinct.

1 Q Suppose it's too late to go to the other
2 precinct, that the polls would be closed by the time
3 you had to go all the way across Montgomery County? If
4 I showed up at a quarter till 7 in the east end of the
5 county and I'm a registered voter but I'm in the wrong
6 precinct there's no way to get to the west end of the
7 county by 7:00, am I allowed to cast any kind of
8 ballot?

9 A No, sir.

10 Q Can't vote.

11 A No, sir. You're entitled to vote but you're
12 entitled to vote while the polls are open at the
13 precinct for your address where you currently live.

14 Q There's no provisional ballot or failsafe
15 ballot for that purpose?

16 A No, sir."

17 There's been nothing mentioned thus far today
18 about the early polling location, I don't believe, but
19 they asserted it in the contest. George may get the
20 last say today, may bring it up then so I got to give
21 you what I got.

22 CHAIRMAN SASSER: Mr. Rochelle, I wanted to
23 check and see.

24 A SPEAKER: 13 minutes.

25 MR. JOHNSTON: We have a little bit of

1 testimony to read in.

2 CHAIRMAN SASSER: Okay. Mr. Johnston.

3 MR. JOHNSTON: This is from Page 128 and 129
4 of the transcript beginning here at line 22, asking:

5 Q "Did you have any calls about
6 questions/queries of officers of any of the elections
7 about the right of the person who has marked but not
8 cast his or her ballot and then wanting to change the
9 vote because they can't find Tim Barnes or Rosalind
10 Kurita's name on the ballot and realized they were in
11 the wrong primary? Did you have any calls?

12 A Yes, sir. We would have had several calls.
13 We had several inquiries during early voting as well.
14 Voters in general were very confused as to what party
15 they wanted to vote in."

16 Then continuing over on Page 145:

17 Q "Did you contact your state contact -- I
18 guess it would be Brook Thompson -- as to those rumors
19 you had heard?"

20 These were rumors about Republican messing
21 around in the Democratic primary.

22 A "I did have a conversation with Brook
23 Thompson concerning people crossing over and voting in
24 one primary versus another.

25 Q Was in it response to the rumors that you had

1 heard or for some other reason?

2 A Just general information."

3 Thank you.

4 CHAIRMAN SASSER: Thank you, Mr. Johnston.

5 MR. ROCHELLE: You hadn't heard anything
6 about this but it was in the contest, an allegation
7 that a lady named Catherine Grizzard made a complaint
8 about Senator Kurita soliciting votes during the early
9 voting period and so we questioned Vickie Koelman, the
10 Election Administrator, about that. The early vote box
11 was at the Election Commission:

12 Mr. Barrett:

13 Q "Would you explain the nature of that
14 complaint, what you did about it?

15 A I had walked to the front office to the front
16 lobby to assist someone coming in that I felt was
17 handicapped, needed assistance coming to the door.
18 This lady approached me and she was leaving the
19 building and she asked me why she was here.

20 Q Well, what did you understand she was
21 referring to?

22 A I said, are you referring to Senator Kurita?
23 She said yes. Well, she's here to vote. She said,
24 well, she shouldn't be allowed to do that. I said,
25 well, she's entitled to vote. And she said, well, what

1 about all the cameras? I said, well, that's the media
2 and they're allowed to be here as well. And she said,
3 I thought your sign said no campaigning in the polling
4 place and you won't let us wear buttons and stickers
5 and pins. I said, that's correct. She said, next time
6 I'm going to wear mine. I said, no, ma'am, you can't.
7 She said, well, she shouldn't be allowed to do that. I
8 said, she's entitled to vote. And she said, somebody
9 should do something about that. I said, well, I'm the
10 administrator and there's not anything I can do; she's
11 entitled to vote and the media is entitled to be here.
12 And she continued to complain."

13 Then there was my questioning:

14 Q "I think the gist of her complaint was that
15 she was here and the media and cameras -- and the media
16 were here, the cameras. Well, if Senator Kurita
17 appeared at your door during early voting, is she an
18 eligible voter?

19 A Yes, sir, that's what I tried -- that's what
20 I explained to the lady.

21 Q So she would be allowed -- I think the
22 statute specifically allows her to come in and vote.

23 A That's correct.

24 Q Do you have any knowledge that she did
25 anything other than what the law allows her to do?

1 A No, sir."

2 MR. ROCHELLE: Now, there hadn't been any
3 testimony offered about two unexplained voters that
4 came in, that was discovered by the local --

5 MR. BARRETT: Let me pop in on that.

6 CHAIRMAN SASSER: Did you want to add
7 something to that bit of testimony?

8 MR. BARRETT: Just about three lines. This
9 is after the complaint from Ms. Grizzard:

10 Q "Alright. As a result of your conversation,
11 did you issue any caution or warning to Senator Kurita
12 or anything?

13 A I did not. I was not close enough to Senator
14 Kurita to anything she was saying to people so I did
15 not."

16 She's talking about Senator Kurita was in the
17 early voting precinct. So she really didn't -- wasn't
18 in a position to know whether or not she campaigned or
19 not in the early voting precinct.

20 CHAIRMAN SASSER: Thank you Mr. Barrett. Mr.
21 Rochelle.

22 MR. ROCHELLE: Alright. On Page 27, it says
23 two unexplained votes. That came in after the five day
24 jurisdictional time limit. I'm not going to read all
25 this to you unless you want me to.

1 I don't think you can consider it. Mr.
2 Barrett may differ with me. He if he does, I'll come
3 back and ask to read it.

4 Over on complaints or lack thereof to
5 Administrator of Elections, it's on Page 29, you can
6 read that as you wish but it's sort of duplicative and
7 very long. And so I'm going to skip that part unless
8 you tell me you want to hear about it. I would
9 encourage you to read it.

10 When we get to crossovers and absence of poll
11 watchers to challenge them, again, I encourage you to
12 read it and I would say to you that even though they
13 haven't introduced any evidence yet, we're assuming
14 they're going to talk about it at the same time, we're
15 going to have Mr. Thompson now, Price Thompson come and
16 talk to you about this idea of crossover polling or
17 crossover voters. Price.

18 MR. THOMPSON: Ladies and gentlemen of the
19 Subcommittee, I would like to direct you to Page 33 of
20 the reply argument that was filed on behalf of
21 Ms. Kurita. It's portion that says, "'CROSSEOVERS' AND
22 ABSENCE OF POLL WATCHERS TO CHALLENGE THEM".

23 Mr. Barnes alleges that there were at least
24 731 individuals who had voted in past Republican
25 primaries and no past Democratic primaries that voted

1 in the District 22 Democratic primary. While this
2 statistic gives no indication as to which Democratic
3 candidate for whom these individuals voted or why these
4 individuals crossed the line, whether they were even
5 interested in Mr. Barnes' race, Barnes argues that
6 since these individuals constitutes -- I've got
7 8.02 percent. It's actually 8.019 percent.

8 I will tell you why it's important in a
9 second. 8.019 of all Democratic primary voters, the
10 election should be invalidated because of the massive
11 volume of Republican raiders.

12 Mr. Barnes fails to provide any context
13 however to support this conclusion and I just wanted to
14 submit these other results for your consideration. If
15 8.019 is a massive influx of the Republican raiders as
16 Mr. Barnes quotes, then the 17,517 Republican voters
17 that voted in the 2006 Democratic primary for U.S.
18 Senate is preposterous, and that's only 3.81 percent
19 but it's still a massive amount of Republicans voting
20 in the Democratic primary. We didn't hear any of these
21 outcries of the election needed to be invalidated.

22 If you'll turnover to the next page, you'll
23 see in the Republican primary for the U.S. Senate that
24 year, Mr. Corker's race, there were 31,799 Democrats
25 that crossed the line and voted in that primary who had

1 never voted in the Republican primary before. That's
2 6.57 percent.

3 So that's nearing the measure that Mr. Barnes
4 has stated is a massive influx. It appears Democrat
5 party members are just as, quote unquote, guilty of
6 crossing over as Republicans.

7 You move on down to house District 65, in
8 '06, there were 586 individuals that had never voted in
9 a Republican primary -- excuse me, never voted in a
10 Democratic primary before who had voted in the past
11 Republican primary that crossed the line and voted in
12 the Democratic primary. 7.07 percent.

13 Move on down District 42, Democratic primary,
14 5.65 percent. Again, we're talking about one or two
15 percentages different from this election that is
16 claimed to be just a disenfranchised of his supporters.

17 Now, we couldn't get the 2008 results until
18 this morning but I would like to point out that in
19 House District 77, this is only a month ago, Judy
20 Barker won her primary and there was an influx of 536
21 Republican voters who had never voted in a Democratic
22 primary before but had voted in past Republican
23 primaries, and I'll put it up on the evidence presenter
24 to see better. That is 8.024 percent, which is greater
25 than the amount that Mr. Barnes claims invalidates his

1 selection.

2 So Ms. Barker, your friends need to tell her
3 about that because she may have problems next year --
4 two years.

5 What this boils down to is I don't think the
6 number that has occurred in Montgomery County is
7 something that is unusual, it's been that way, and for
8 us to try to make a referendum about it here today, I
9 believe as Mr. Rochelle put in his brief, is playing
10 with razor blades as someone said in one of the
11 articles that I've read about this event.

12 One other thing that Mr. Barnes, in one hand
13 he claims there was just this massive influx of
14 Republicans voting in this primary. He claims that he
15 heard rumors that this was going to happen yet he
16 didn't utilize the remedy in the State Law for
17 preventing crossover voters. That's to have poll
18 watchers in the polling location and challenge voters
19 if you don't think they're a person that needs to be
20 voting in the Democratic primary.

21 He just didn't do that.

22 And Ms. Koelman, who is the Administrator of
23 Elections in Montgomery County had this to say about
24 poll watchers on Page 34 of our reply argument. This
25 is in relation to the rumors that she heard prior to

1 the election that there was going to be a lot of
2 Republicans voting or Republican primary voters voting
3 in the Democratic primary.

4 Ms. Koelman says, "I spoke with Brook
5 Thompson and there was no instruction from him that
6 there was any action on my part to take." Mr.
7 Rochelle:

8 Q "Alright. When you spoke with Brook, you
9 said you spoke to him about -- am I correct that you
10 say you want to be a Democrat that day, you can be a
11 Democrat for a day or for an hour or for 15 minutes,
12 however long it takes you to vote? Is that the nature
13 of the conversation you had with Mr. Thompson?

14 A That's correct. My concern was in regard to
15 challenging the voters, what obligation do we have as
16 election officials concerning that.

17 Q Do you know whether Mr. Barnes' poll watchers
18 challenged any voters because they weren't Democrats
19 and they had chosen to vote in the Democratic primary?

20 A There were no poll watchers for either party
21 in this election.

22 Q And there were no challenges made in the
23 voting places in regards to the rights of some person
24 who says I want to vote in the Democrat primary.

25 A That's correct, no, sir."

1 What we're getting at, he had every right in
2 the world to have voters there, poll watchers there to
3 challenge and he didn't take this opportunity to do it.
4 So that's the gist of this.

5 I think that 8.019 percent is not too many.
6 Is not an unusual occurrence. It happens ever year in
7 Tennessee primaries. For this to be invalidated on
8 this basis is just not supported by the evidence.

9 Thank you.

10 If I could file as exhibits, this voter
11 analysis of House District 77, and I apologize if my
12 voice is about gone.

13 CHAIRMAN SASSER: We'll consider both of
14 those. It's been brought to my attention that counsel
15 for both sides has right about five minutes left. I
16 understand there might be a witness that this Committee
17 would like to have some time to hear from.

18 I don't want to keep -- this Committee has
19 been very, very patient. Would it be helpful to each
20 side if we gave each side about another five more
21 minutes? We don't agree on that, I'll stick to the
22 time limit we set.

23 Would that be alright? For the record, can
24 both counsel indicate that is acceptable?

25 MR. ROCHELLE: Yes, sir.

1 MR. JOHNSTON: On behalf of Mr. Barnes,
2 that's acceptable.

3 MR. ROCHELLE: We'll do our best.

4 CHAIRMAN SASSER: We're going to have to add
5 five minutes to each person's time and be very
6 stringent on what we keep.

7 Mr. Owen has got a question. Again, when
8 you're taking questions from the Committee, doesn't
9 count against your time.

10 MR. OWEN: Thank you very much. On these
11 cases that you cited with the crossovers and percentage
12 and everything, are you -- what was the new -- you
13 specifically cited the Barker race.

14 What was the margin in that race, margin of
15 victory?

16 MR. THOMPSON: I do not know that answer, Mr.
17 Owen. All I have is the primary analysis that the
18 party did.

19 MR. OWEN: The other races, do you know if
20 those were close races or maybe someone from
21 Ms. Barker's district can --

22 CHAIRMAN SASSER: If I can respond to Mr.
23 Owen's request, if it's okay with counsel for both
24 parties, we have Internet access and can provide
25 answers to the questions of margin of victory, who won

1 each one of elections as received based upon the State
2 of Tennessee's website?

3 Is that accept to both counsels?

4 MR. ROCHELLE: Yes.

5 MR. JOHNSTON: Yes.

6 CHAIRMAN SASSER: Let the record show counsel
7 for both parties agreed with that conclusion.

8 Mr. Yarbrow, if you could determine what those
9 were, we will make that information available right
10 prior to closing arguments, if that's okay.

11 MR. THOMPSON: I would point out for the
12 record in response to Senator Owen, that the allegation
13 here that there's been a massive influx of Republican
14 crossover votes -- not as much in this particular
15 argument, that the 19 votes is what they're complaining
16 about.

17 I do have four other exhibits just for the
18 record I'd like to make.

19 CHAIRMAN SASSER: We'll be glad to accept
20 those exhibits. I wanted to make sure, has Mr. Barnes
21 seen what's being offered as an exhibit?

22 MR. BARRETT: No, we have not.

23 MR. THOMPSON: These are the four exhibits on
24 my reply and this one is the one I brought up this
25 morning. I think you were e-mailed by the party.

1 MR. BARRETT: Our copy?

2 MR. THOMPSON: I'll need to keep that one.

3 This is what I'm making an exhibit.

4 MR. JOHNSTON: May I respond to Senator
5 Owen's question as well? I think he was kind of
6 addressing everybody in this.

7 Let me try to go through and explain because,
8 Senator, you've hit the nail on the head with your
9 question about the margin of victory and why the
10 percentage in this case is as we described it massive.

11 I really didn't have time because I didn't
12 get these other four until this morning to look at them
13 in any detail, but I tried to look at the first four or
14 three, four that they had and try to analyze those.

15 Let me kind of -- as I go through this, I'll
16 put this up so you can see what I'm talking about. The
17 first one here was the --

18 MR. ROCHELLE: Could I inquire, is this part
19 of the evidence that you're presenting or --

20 MR. JOHNSTON: It's a response to Senator
21 Owen's question about the percentage and why they're
22 important.

23 MR. ROCHELLE: I need you to ask me a
24 question.

25 CHAIRMAN SASSER: What we'll do, we'll let

1 Mr. Johnston use this time as a response to Mr. Owen's
2 question and then I'm going to let Mr. Rochelle present
3 some rebuttal testimony to whatever Mr. Johnston wants
4 to say.

5 I would encourage both parties, you know, be
6 as efficient in your use of the English language as you
7 can.

8 MR. JOHNSTON: First of all, I've got some
9 handwritten notes, I won't put those up because nobody
10 will be able to read them.

11 In the U.S. Senate Democratic primary in
12 2006, there's a total -- this is on this, 420 --
13 421,996 total votes in that race. You'll recall that
14 that was a multiperson race although we probably don't
15 remember very much other than Congressman Ford.
16 Congressman Ford won that race with a total vote of
17 333,000 plus votes.

18 Looking at the -- looking at the document
19 here, just to make sure that everybody understands what
20 we're looking at, the top portion of this shows a
21 breakdown of the Democratic vote by prior Democratic
22 primaries and the first number up there, 113,400,
23 represents Democratic voters, voters who voted in that
24 Democratic primary who had never before voted in a
25 Democratic primary.

1 The second is a breakdown of that 113,400.
2 Giving the benefit of the doubt here -- it shows that
3 95,883 of that 113,000 or 84.6 percent had never voted
4 in the Republican primary, either.

5 So these are people that have just moved
6 here, never voted before whatever. Taken into
7 consideration we're talking about the last nine years
8 as well.

9 If you add together the zeroes and the 1s
10 which I think we all would agree, those aren't hardcore
11 Republican voters. Those are Independents, people who
12 could swish, whatever.

13 93.4 percent of that 113,000, the more
14 hardcore Republicans are those who have voted
15 consistently over that period of time in Republican
16 primary after Republican primary after Republican
17 primary.

18 Just arbitrarily I picked four or more. If
19 you add those together that comes up to a whopping
20 1,536. That is 1.3 percent of those voters who had not
21 previously voted in a Democratic primary. 1.3 percent.
22 That's 1,536 people. There's no way that that would
23 have had any influence whatsoever on a victory of
24 333,000 votes.

25 Moving on to in the Republican primary, I

1 don't know the margin of victory here but what you're
2 seeing is very similar numbers, the zeroes, those
3 people who had never before voted in a Republican
4 primary, in this case, 78 1/2 percent. Adding the 1s
5 and zeroes together, 89.4 percent.

6 The more hardcore Democrats that crossed
7 over, a total of 3,921, 2.6 percent. Hardly anything.
8 Didn't affect the outcome in that race at all.

9 House District 65 is another one of those
10 that they've picked out. This I've also got some
11 handwritten up there. This was Eddie Bass and Lee
12 Bussart Bowles. The totals there, 4,378 for Mr. Bass,
13 3503. Vote difference of 875.

14 Looking down at the second number, if you
15 added up the four and overs, that comes to 3.1 percent
16 of the total vote. You're talking about 15 votes.
17 That didn't make a difference in this race.

18 In fact, if you added up all of the
19 Republican votes cast, every single one of them from 1
20 on down, it only comes to 586. It didn't make a
21 difference.

22 In House 42, the other one that they asked
23 for. This was a multicandidate race, Louis Coomer,
24 Henry Fincher, Thomas Willoughby and Charles Womack.

25 I've taken these numbers from the website so,

1 Mr. Coomer, 1956; Henry Fincher, 3515; Thomas
2 Willoughby, 204, Charles Womack, 2817.

3 The difference between Mr. -- between number
4 1 and number 2, 698. The total Republican vote, any
5 person that had voted previously in a Republican
6 primary one or more times, 496. It did not make a
7 difference.

8 Seventy-five percent of these voters were
9 first time voters. 88 percent adding the 1s and the
10 zeroes and the more persistent of the Republican
11 crossover, a total of 39 or two percent.

12 Now, let's contrast that with this race. In
13 this particular race, you had a total of 9,115 ballots
14 cast. Of those, 1,289 had never previously voted in a
15 Democratic primary.

16 That's the second breakdown. The total
17 there, 1,289 conforms to the top number up here.

18 Of that number, only 558 or 43 percent, way,
19 way less than the other numbers we've looked at, all in
20 the 70s or even 80 percentile of those first time
21 voters crossing over.

22 Adding the 1s and the zeroes, only brings it
23 up to 57 percent. Substantially below the other
24 numbers that we've seen here.

25 Importantly, let's take a look over here at

1 the consistent Republican voters, four or more times,
2 adds up to 284 votes. That is 15 times the margin of
3 victory in this case and it amounts to 22 percent of
4 that vote. The numbers are drastically different and
5 that is why this is different.

6 CHAIRMAN SASSER: Mr. Rochelle, would you,
7 rather Mr. Johnston to answer that question, I would
8 like to extend the same courtesy to you to respond to
9 Senator Owen's question.

10 MR. ROCHELLE: Well, I'm not the one to
11 respond to Senator Owen's question.

12 MR. BARRETT: Cannot hear you, Bob.

13 MR. ROCHELLE: The fact of the matter is when
14 they started asking for these voter analysis things,
15 evidently for Doug to go through, we went looking and
16 we came back with comparisons based on the same
17 formulas used by the party in building the sheet, and
18 that comes back and says while there's some more in
19 2008, that it is not a massive number.

20 Now, we can talk about that more in our
21 closing arguments. The key thing is did anybody
22 perpetuate a fraud? You got Republicans crossover,
23 Democrats crossover. Where is the fraud?

24 You have Mr. Thompson here. I think he's
25 still sitting back there. You may want to call up and

1 ask him. Who committed a crime that day? Who
2 committed a fraud that day?

3 So, no. We did the analysis according to the
4 way the party had done the analysis. We're not aware
5 that Mr. Barnes' team was going to run other formulas
6 to them, other computer analysis to them.

7 I'm sure if we had more time we could show
8 you the different analysis that they've done and I
9 think it will come out the same, the same result.

10 CHAIRMAN SASSER: Thank you. We're going --
11 as soon as Mr. -- Mr. Rochelle are you ready to call
12 the witness? As soon as Mr. Rochelle calls his next
13 witness, we're going to start the timers again with the
14 notation that we're going to give you five more minutes
15 time than we originally allocated.

16 I would ask to stick to that time and we'll
17 move directly to closing statement.

18 MR. ROCHELLE: We have one witness. Call
19 Senator Rosalind Kurita.

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21

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- - -

1 ROSALIND KURITA,

2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. ROCHELLE:

4 Q Senator Kurita, if you would, tell us about
5 yourself, who you are, and how did you get here?

6 A For those of you who don't know, I'm Rosalind
7 Kurita. I am State Senator.

8 I never started out to be in politics. The
9 way that I got involved in politics, when my children
10 were small they attended East Montgomery Public School.
11 There was no lunch room at the school. I wanted my
12 children to have the best public education they could
13 and like many women, I started speaking up. I worked,
14 I spoke up, I organized and I got us a lunch room.

15 I ran for the County Commission because I
16 wanted to be sure that public education in Montgomery
17 County was funded. I saw that I could do that, that I
18 could help people and I found a home in the Democratic
19 Party where I could work for the things that I believe
20 in.

21 I'm a pro choice woman and I have been an
22 unwavering supporter of reproductive rights for women
23 in the State Senate.

24 I have helped many Democratic candidates. I
25 worked, gave great numbers of time for Bredesen when he

1 ran. In fact, I was one of his designated speakers.

2 I've worked in a number of Senate campaigns.
3 Senator Henry. Had my children in Senator Jim Kyle's
4 district putting up yard signs for him. I have been a
5 member of the Tennessee Democratic Finance Committee
6 for years where I've given money.

7 I also have especially tried to help women
8 candidates to learn how to run for office because I
9 think that we need more women in politics and, again, I
10 found the Democratic Party to be the place where women
11 could make moves forward.

12 I have a one hundred percent voting record
13 with the TEA. That means that on every single issue
14 that the Tennessee Education Association had an issue,
15 I was there for them because I support public
16 education.

17 I am incredibly green. I was even an
18 environmentalist before it was cool. This year I
19 received an award from the conservation voters. I
20 serve on the Governor's Energy Task Force. I am
21 committed to seeing us get off the fossil fuel
22 addiction. We cannot drill our way out of this
23 problem.

24 I represent Fort Campbell uniquely. I take
25 care of my Veterans. This year I was able to get tax

1 relief for my disabled Veterans that had never had it
2 before. Those are the kinds of issues that I work on.
3 That's what I do.

4 I have been -- I am a nurse. I care about
5 healthcare. For years I personally worked to get the
6 cigarette tax increased and I also got cigarette
7 smoking outs of the Capitol, much to the chagrin of
8 some.

9 In the absolutely last moments of trying to
10 pass the cigarette tax I think my single coup was that
11 I was able to add two cents to the cigarette tax to
12 fund our trauma hospitals.

13 And so you know what a trauma hospital is,
14 it's a place where you go when you have your child in
15 your arms and they're hurt bad. You go to Vanderbilt,
16 you go to the Erlanger. It's where you go when you
17 have to have big time care, and I made sure that they
18 were funded.

19 That's who I am. Those are the kinds of
20 issues that I work on. I believe that I am my
21 brother's keeper and I will continue to work on those
22 kinds of issues.

23 The Democratic Party is the big tent and it's
24 where I live. Thank you.

25 Q Senator Kurita, thank for your comments. Let

1 me ask you about some of the details of this thing.

2 We have "Pottygate" where you supposedly went
3 to a building known as Harpeth High School. If you
4 would, explain to us what happened.

5 A What happened, on election day I tried to go
6 to as many of my polling places as I could because I
7 would waive and try to encourage people and come and
8 vote for me. I was very careful always to stay outside
9 the boundary.

10 When -- I had been working all day. When we
11 came down to Cheatham County, went to Harpeth High
12 School I stopped at a filling station because, quite
13 frankly, I needed to go to the bathroom. When I got to
14 the filling station the restroom was broken. I
15 couldn't get in.

16 So we went on to Harpeth High and the fact of
17 the matter, is I needed to go. I made sure I had no
18 campaign insignia. I went into Harpeth High School.
19 I've been there many times before. I went into the
20 school. The polling took place in a completely
21 separate, enclosed area. Voting took place in the gym.

22 I never entered the gym, I never spoke with
23 one human being. I made sure that I put my head down.
24 I wanted to go in, go to the bathroom and return, went
25 outside the boundary and that's where I stay. So I

1 never engaged one human being, never looked one human
2 being in the eye.

3 CHAIRMAN SASSER: Mr. Rochelle, I note that
4 takes your time. I do not want to cut Senator Kurita
5 off, however. I want to give everybody in this hearing
6 as much of a chance as possible.

7 MR. ROCHELLE: Mr. Barrett and I both had a
8 misunderstanding when we started not understanding the
9 rules. We didn't understand cross examination was
10 going to count.

11 A SPEAKER: Move for five more minutes for
12 Senator Rochelle and Senator Kurita.

13 CHAIRMAN SASSER: No problem here.

14 MR. ROCHELLE: Thank you very much. We all
15 appreciate it.

16 Q The next allegation I want you to address is
17 this, that some Grizzard lady or something said you
18 were soliciting -- she didn't say you were soliciting
19 votes, she said you were present at the early vote
20 location. You were in the interviews the other day
21 when Vickie Koelman talked about that.

22 If you would, tell us, did you solicit any
23 votes at the early voting place?

24 A Absolutely not. I had been campaigning at
25 early voting location in Montgomery County that day. I

1 was there with a lot of my Veterans. We were standing
2 out waiving. I was going to early vote that day and
3 many of my folks wanted to all come.

4 I went in to vote. I did not have on an
5 insignia. I did not solicit a single vote there were
6 people with me who were my friends who had come in with
7 me. Maybe she got confused about that. Maybe she just
8 didn't like me voting. I voted, I left. I went back
9 to my place. No insignia, never shook a hand, never
10 solicited a vote.

11 Q Next. It's been suggested there was some
12 conspiracy out there among election officials to gang
13 up on Mr. Barnes and then that there was some
14 conspiracy by the Republican Party to have their folks
15 go vote in the Democratic primary. I'll ask you a
16 question.

17 Did you have any knowledge, any knowledge,
18 any type of activity by the election workers to cheat
19 Mr. Barnes?

20 A No, I did not.

21 Q Did you have any knowledge or have you
22 obtained any knowledge of any organized effort by the
23 Republicans to have impact in your race?

24 A No, I have not.

25 Q One final thing. I know this one is

1 difficult for you but I have to ask you anyway.

2 There's an allegation that was put in one of
3 the last affidavits about a Ms. Haines down in Cheatham
4 County who is the Vice Chairman of the Republican Party
5 in Cheatham County, that she voted in the Democratic
6 primary.

7 I don't know whether one vote constitutes a
8 conspiracy or not, but I need you to address in regard
9 to that one Republican.

10 Do you know her?

11 A Yes, I know her.

12 Q Did she discuss with you that she was going
13 to vote in the Republican primary or whatever?

14 A Faye Haines may have been an officer in the
15 Republican Party in Cheatham County but she is also my
16 personal friend and has been for many years.

17 Faye and I have shared some personal
18 tragedies together. She had a child who committed
19 suicide, I have a nephew who committed suicide, and we
20 have known each other and shared sympathies for a long
21 time.

22 I know her and I would assume she would have
23 voted for me. She's my friend.

24 MR. ROCHELLE: Alright. That's all.

25 CHAIRMAN SASSER: Mr. Barrett, do y'all have

1 any questions?

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4

5 CROSS EXAMINATION BY MR. JOHNSTON:

6 Q Senator, I'm Doug Johnston. I think we met
7 before. I don't have a whole lot of questions for you
8 but I do want to ask you a few things and I want to
9 call your attention, if I could, to the last page of
10 the response that you and your counsel filed on your
11 behalf to this contest, not counting the exhibits.

12 If you don't have a copy, I can --

13 A Thank you.

14 Q Let me start --

15 A SPEAKER: What page is that?

16 MR. JOHNSTON: Page 13.

17 Q It says, and you mentioned this just a minute
18 ago, that she has been recognized as a leader in
19 protecting the environment and developing alternative
20 energy sources.

21 In the last session of the Senate, there was
22 an energy efficiency bill. Do you recall that?

23 A There were a number of energy efficiency
24 bills. I wonder if you could be a little more
25 specific.

1 Q Let me try to be a little bit more specific.

2 In May of this year, there was a substitute
3 bill that was put forth by Senator Kyle to the bill
4 that was on the table and Senator Kyle was attempting
5 to get the Democratic substitute to that bill passed
6 and, in fact, you voted with the Republicans and were
7 the only Democrat to vote with the Republicans to kill
8 the Democratic substitute; isn't that true?

9 A No, it is not true. As a matter of fact, the
10 bill that you're talking about, the Democratic
11 initiative came from Representative Les Winningham in
12 the House.

13 It was voted on unanimously in the State
14 Senate Education Committee. Senator Kyle, being from
15 Memphis, had a different take on it from Memphis. He
16 wasn't interested in trying to help high growth
17 communities to build schools that could use geothermal.
18 He was more interested in lowering the overall lottery
19 scholarship, the GPA.

20 I represent my district and I stuck with what
21 my district wanted and needed and that was to be able
22 to build schools and to be able to use geothermal and
23 to have money, a hundred million dollars to be able to
24 put into environmentally efficient buildings.

25 I represent my district first. I don't

1 usually ask other Senators what I'm supposed to do.

2 Q And, in fact, again, you were the only
3 Democratic Senator to vote against that Democratic
4 alternative, weren't you, the vote was 17 to 15 and all
5 the Republicans and you voted against it, voted to
6 table it, right?

7 A I voted my conscience. I can't speak for
8 anyone else.

9 Q And, in fact, that's not the only time in
10 this last session that you have been the only Democrat
11 voting against --

12 CHAIRMAN SASSER: Mr. Johnston, I want to
13 caution you here a little bit. We're here on a
14 election contest. We know our history. We're going to
15 try to give everybody a lot of leeway but let's make
16 sure the questions are relevant to the contest.

17 MR. JOHNSTON: I'm looking at the last page
18 of her own submission that she's placed before you and
19 she's been talking about the things that she's done so
20 I'm simply responding to that. But I'll move on.

21 Q Let's look at another sentence here. It
22 says, "The Senator has shown her ability to make a
23 short-term decision which may be unpopular for awhile
24 but which will result in long-term benefits for the
25 State's citizens."

1 That appears to be at least to me a reference
2 to your vote to elect Ron Ramsey as Lieutenant
3 Governor. Is that kind of what that's supposed to be
4 saying?

5 A I don't know how you interpret it. It could
6 be a joke by Senator Rochelle that I increased the tax
7 on cigarettes.

8 Q Well, let's just -- let's talk about that a
9 little bit. Is it your contention that a vote to
10 create Lieutenant Governor -- to create a Republican
11 Lieutenant Governor --

12 CHAIRMAN SASSER: Excuse me, I think Mr. Owen
13 wants to make a statement.

14 MR. OWEN: Pardon me and I appreciate what
15 you're saying here Mr. Johnston and I appreciate
16 Senator Kurita being here, but I have all this marked
17 to raise the issue as well and from what Mr. Barnes had
18 said and what y'all have said about Mr. Barnes being
19 the great Democrat and Senator Kurita being a great
20 Democrat and all that, all of it is irrelevant as far
21 as -- I think it's irrelevant as far as the contest
22 that we are here to decide, and certainly any previous
23 votes on the floor of the State Senate or anything
24 else. What people have done in the past, as far as I
25 can tell, is irrelevant to the contest before us.

1 We're here to decide whether or not this
2 election contest was accurate or whether it was --
3 there's a problem, whether we can -- going to accept
4 Senator Kurita as the Senator or whether we're going to
5 remove her and accept Mr. Barnes as the Senator or --
6 excuse me, the nominee, or whether we're going to do
7 something else and the rest of it.

8 We've been here a long time. So I would ask
9 the Committee that or suggest to the Committee that
10 this is irrelevant and that we move on to some more
11 relevant things.

12 A SPEAKER: Is that a second?

13 CHAIRMAN SASSER: I would hope at this point
14 in time Mr. Johnston has heard from two, three people
15 on the Committee about the relevancy of this line of
16 questioning. You might want to consider moving on.

17 MR. JOHNSTON: Let's talk about this race.

18 BY MR. JOHNSTON:

19 Q Did you, Senator Kurita, authorize your
20 campaign to make calls to registered Democratic voters,
21 tell them that Tim Barnes was a Republican and if they
22 wanted to vote for him, they should vote Republican or
23 was that Republicans?

24 A I did not make any calls that would have
25 tried to get people to think that Tim Barnes was a

1 Republican. I mailed and called primary voting
2 Democrats. Those were the only people that I ever
3 campaigned to.

4 I purchased lists of primary voting
5 Democrats. That's who I campaigned to. Those are the
6 people that were going to vote for me.

7 Q Did you authorize your campaign to make
8 repeated harassing telephone calls to potential Tim
9 Barnes supporters and hang up the phone so that they
10 would get upset and wouldn't vote for him or was that
11 Republicans doing that on your behalf?

12 A I did not authorize anyone to make a call of
13 any kind. Certainly no politician with any kind of
14 sense would call somebody at 6:30 in the morning.

15 Q Did you authorize your committee to steal Tim
16 Barnes' picture and use it in a negative piece for
17 yourself or was that Republicans?

18 A Your question is so posed that you say did I
19 do something or was it the Republicans. No, I did not
20 do it. Do I know if Republicans did something? I
21 can't answer that because I was not in communication
22 with the Republicans.

23 Q One of things that Mr. Barnes testified to a
24 little bit ago was that you had called the Board of
25 Regents complaining about his wife and his wife got

1 called in to the President's office.

2 Did you call the Board of Regents or anyone
3 there to complain about Tim Barnes's wife?

4 A No, I did not. And, in fact, I think that
5 Mr. Barnes even said that his wife in a previous race
6 sought them out to ask what the rules were.

7 Q Do you know who did call over there?

8 A I don't know anything about it.

9 Q I've got just one last thing that I want to
10 ask you about and that is, you were a sitting Senator
11 when the Ophelia Ford matter was brought up, correct?

12 A Does this have something to do with my race?

13 Q Yes, it does.

14 A I am a sitting State Senator.

15 Q And you voted to throw out that election and
16 have Senator Ford run again, did you not?

17 A Senator Ford is a Senator. She's now a
18 Senator with no cloud hanging over her.

19 Q You voted to void her election in 2007,
20 didn't you?

21 A I did vote to void her election.

22 Q And in that election contest, the difference
23 between her vote and the second person's vote was 13
24 votes. You recall that, don't you?

25 A I don't believe numerosity was the problem.

1 Q That's exactly correct. There was only 12
2 votes that were actually called into question and yet
3 you voted to throw that out.

4 CHAIRMAN SASSER: Mr. Johnston, you're
5 getting kind of close to the line again.

6 MR. JOHNSTON: That's all I have.

7 CHAIRMAN SASSER: Anybody on the Committee?
8 You want any redirect, first, Mr. Rochelle?

9 MR. ROCHELLE: I'll defer to any questions on
10 the Committee.

11 A SPEAKER: I do. I guess one of my
12 questions here today would be why did any of the
13 Election Commission not come forward where we could ask
14 them questions, the ones you took depositions from?

15 MR. ROCHELLE: We were in a delicate
16 situation in that the attorney for the Montgomery
17 County Election Commission said he did not want us
18 talking to his clients until he had adequate time to
19 investigate it.

20 And he construed as his clients a
21 relationship because -- I understand it's hard to get
22 poll workers. He construed his relationship with the
23 Election Commission as a relationship with the election
24 workers, also.

25 So, we could not contact them, legal ethics

1 we couldn't contact them without his permission. He
2 then arranged the interviews for Tuesday. We conducted
3 the interviews for Tuesday and I think there was
4 satisfaction with the -- from our side there was
5 complete satisfaction with the comments that they made
6 in the interviews that are contained in the
7 transcripts.

8 We didn't feel the need to call them because
9 we had the transcripts that refuted everything they had
10 made. And then the deadline for witnesses came
11 Thursday at noon and Mr. Barnes' team had not
12 subpoenaed them or had not -- we can't subpoena but had
13 not included them on the witness list.

14 MR. PHILLIPS: If I may, I just wanted to
15 echo what Senator Rochelle said, make sure the vote of
16 the Subcommittee and the Primary Board both are aware,
17 unlike a Court case where parties have the ability to
18 use the Court to issue subpoenas to compel witnesses to
19 attend, either if they refuse to appear voluntarily, we
20 don't have that power.

21 We were unable to offer that power to either
22 side and so to the extent they were able to get
23 witnesses here, it was only if that witness was
24 agreeable to do it. So I just wanted to confirm what
25 Senator Rochelle was just saying.

1 MR. OWEN: Thank you. Did both sides have
2 the right to invite witnesses, the people that have
3 submitted affidavits but are not here?

4 Did they have the right to invite them and
5 could they have come voluntarily if they wanted to or
6 they were available?

7 MR. PHILLIPS: Both sides certainly had the
8 option to invite witnesses. I think what Senator
9 Rochelle was trying to point out, the folks who were
10 election workers on behalf of the Montgomery County
11 Election Commission are represented by county legal
12 counsel and I feel quite certain, although I can't
13 confirm this for one hundred percent, but I feel quite
14 confident in telling the Committee and the Primary
15 Board, more generally, I doubt very seriously any of
16 those witnesses would have been allowed to appear
17 without the approval of the county's legal counsel.

18 Certainly if I were in that person's shoes,
19 that would be the position I would take.

20 So I don't know that anyone should draw any
21 inferences or conclusions from the fact that the poll
22 workers from Montgomery County Election Commission did
23 not attend today. I suspect that decision was made by
24 someone else above their pay grade.

25 MR. ROCHELLE: No other questions. Senator

1 Kurita, you're excused. And subject to enduring the
2 lawyer's closing arguments, we close.

3 CHAIRMAN SASSER: Thank you. Let me see a
4 show of hands from the Committee. We're going to have
5 closing arguments from each side.

6 Each side has got 15 minutes. Show of hands
7 quickly from the State Primary Board Members. How many
8 of y'all want to take a break?

9 Seeing that we've got a lot that want us to
10 plow through, we're going to open this up for closing
11 arguments, 15 minutes each, and we'll start with Mr.
12 Barrett and Mr. Johnston.

13 I would say if anybody needs to take a quick
14 break, you can go ahead take a quick break and come on
15 back quickly.

16 MR. JOHNSTON: I would like to reserve about
17 five minutes for rebuttal. So if you can kind of let
18 me know when I hit ten, that would be great.

19 I think the key words that we need to keep in
20 mind, ladies and gentlemen, is "incurably uncertain".
21 If ever there was a race where that label could be
22 applied, this is the one.

23 It is incurably uncertain, it is incurably
24 uncertain because we know, we've seen that Republicans
25 crossed over, not just because they happened to want to

1 vote for somebody, not because of the normal and usual
2 situation where people occasionally change over, but
3 because there was a massive, concentrated, organized,
4 movement by the Republican Party to do that, and
5 because we know that there was massive confusion on the
6 part of voters in the 22nd District. We know that
7 through a number of different ways.

8 Let me start by just taking a look at the
9 questions that you're going to be requested to answer.
10 There's two of them. One of them is what we've called
11 the numerosity issue and that is whether or not we have
12 shown that the number of votes that might have been
13 cast for Mr. Barnes could overcome the 19 vote margin
14 of victory that Ms. Kurita enjoyed on August the 7th.

15 The second is the one that includes in a
16 phrase, "incurably uncertain".

17 And in that, as you can see from the rules
18 that you have, should have there in front of you, it
19 tells you that you can look at whether or not this is
20 incurably uncertain regardless of whether or not you
21 can ascertain with mathematical certainty whether or
22 not this was overcome.

23 Now, we start, of course, with the knowledge
24 that back in at least in July or perhaps earlier than
25 that, Ron Ramsey made it known publicly that he was

1 going to do what he could to support Rosalind Kurita,
2 and it worked. And we've heard testimony here about
3 telephone calls that were made into this district
4 telling voters that Tim Barnes was a Republican,
5 telling them that if they wanted to vote for him, they
6 had to vote Republican and we've seen the results. The
7 results are clear.

8 There were a number of people who showed up
9 at these polls asking to vote for Tim Barnes thinking
10 he was a Republican or, even worse, showing up at the
11 polls, telling the officials in those polls who are
12 obligated by law to do what they can to support a voter
13 and do it honestly, telling them that they -- that the
14 voter had to vote Republican if they wanted to vote for
15 Tim Barnes.

16 We're not talking about one place or two
17 places. We're talking about in a number of different
18 district or precincts.

19 At the Fairgrounds we heard Mr. and
20 Mrs. Walker corroborated by Ms. Meriweather. Mr. and
21 Ms. Walker told the election officials specifically I
22 want to vote for Tim Barnes. What were they told?
23 He's Republican, you got to vote Republican Party
24 primary if you want to vote for Mr. Barnes. That's
25 exactly what they did.

1 The woman behind her, Lenore Meriweather
2 overheard that and she confronted the official and
3 said, "You can't do that, that is incorrect."

4 Now, they say, of course, that they did that
5 right there in front of the Walkers but that doesn't
6 make any sense. The Walkers went there to vote for Tim
7 Barnes. If they had been told right then and there
8 that he was a Democrat, then they would have changed
9 it. They didn't because they weren't told.

10 They voted Republican because that is exactly
11 what they were told to do when they went to vote for
12 Tim Barnes. And Ms. Meriweather talked to another
13 election official there and what did she say? Been
14 happening all day, been going on all day.

15 Now, of course, that election official
16 suddenly doesn't remember that anymore but that's okay.
17 There's another part of her, what we know happened that
18 she didn't remember, either. She just didn't want to
19 remember anything because she understood the gravity of
20 that situation.

21 How many others who didn't come forward at
22 the Fairgrounds were told exactly the same thing and
23 ended up without a vote for Tim Barnes? Incurably
24 uncertain.

25 Woodlawn district. Nancy Burchett, same

1 thing. Outlaw Field, Debra Jones, same thing.

2 Bethlehem United Methodist Church, Peter Napolitano,
3 same thing over and over and over again.

4 And at East Montgomery School, there was a
5 write-in on the Republican for him along with two more
6 Republican write-ins at St. Bethlehem's Church. All of
7 that is in the materials that you've been provided.

8 This happened in five separate places that we
9 know of. Now, maybe it is that the election officials
10 themselves were just confused because there had been so
11 much of this calling and the rest.

12 A little while ago I read to you the
13 testimony of Ms. Koelman, the Election Coordinator and
14 a very competent and wonderful woman who we met the
15 other day. She's very good.

16 She had heard those rumors. She did exactly
17 what she was supposed to do. She called Mr. Thompson
18 to find out what, if anything, she could do. But even
19 she had heard the rumors that the Republicans were out
20 to mess this vote up.

21 Now, the question I guess is this: Is it
22 illegal, is it illegal to vote in the other party's
23 primary? We have an open system in Tennessee. There
24 is no party registration and we all mostly like it that
25 way and we're not in anyway attempting to get you to

1 suggest that that should be changed or anything else.

2 But I think it's important, why don't we take
3 a look at the statute and just see what the statute
4 says about what is required.

5 The statute is very clear. Reading here,
6 2-7-115 (b), "A registered voter is entitled to vote in
7 a primary election for offices for which the voter is
8 qualified to vote at the polling place where the voter
9 is registered if, number 1, the voter is a bona fide
10 member of an affiliated with the political party in
11 whose primary the voter seeks to vote or, 2, at the
12 time the voter seeks to vote, the voter declares
13 allegiance to the political party in whose primary the
14 voter seeks to vote and states that the voter intends
15 to affiliate with that party."

16 Do we seriously believe, ladies and
17 gentlemen, that the Republicans, those people who voted
18 four or more times over the last nine years in
19 Republican primaries and had never, ever before voted
20 in a Democratic primary, were they honestly, honestly
21 declaring allegiance to the Democratic Party and
22 stating that they attempted to affiliate with that
23 party?

24 I can't imagine such a thing. They were not.
25 They were doing the bidding of the Republican

1 Lieutenant Governor that Rosalind Kurita helped put in
2 power.

3 There is no Republican who is seeking to run
4 in the general election. So they go in and they help
5 her win in the primary and she's there. That, ladies
6 and gentlemen, is exactly what has happened, incurably
7 uncertain based on the statute, based on the evidence,
8 based on the totality of the circumstances.

9 Thank you.

10 CHAIRMAN SASSER: Thank you, Mr. Johnston.
11 You'll have about five minutes when Mr. Rochelle gets
12 through.

13 MR. ROCHELLE: I don't know about y'all, I'm
14 getting a little tired. I'm going to try not to take
15 15 minutes but I've been known to fail at that in the
16 past.

17 Let me tell you, first, this is about law so
18 let's talk about the law first. To void an election on
19 the basis of irregularities or statutory violations the
20 alleged wrong must be so gross and palatable, a failure
21 of the opportunity for a free and equal expression of
22 the popular will that the Courts cannot permit the
23 election to stand.

24 A SPEAKER: Where is that law?

25 MR. ROCHELLE: I'm reading from my brief,

1 brief of law. The focus of the Court's inquiry, the
2 Board's inquiry, paraphrase, must thusly be kept in
3 mind, that is whether the violations are so serious as
4 to thwart the will of the community upon a particular
5 question.

6 I was going to argue a little bit but I enjoy
7 reading the cases. You might have heard about the
8 Forbes case. That was back in 1991. They said that to
9 determine whether alleged violations are serious
10 enough, you got to compare case -- the case with prior
11 cases.

12 So they start out by considering a 1951 case,
13 "Shoaf", where you had the election officials marking
14 the ballots, intentionally failing to deliver
15 sufficient ballots to the precincts where the contestee
16 was believed to be strong, specific alleged and proved
17 instances of intimidation and duress.

18 Then they cited State versus "Kibbitt", 1944
19 and that case voters were brought in from Kentucky.
20 Poll tax receipts were purchased in bulk. Poll
21 watchers were forcibly ejected from various polling
22 places.

23 Then they went to "Hollis versus Vaughn",
24 fraudulent ballots were printed without the name of the
25 contestant were printed on them. Then they cite the

1 "Southhall versus Billings". Allegations of poll tax
2 receipt purchases. That was a big thing back then when
3 you had the poll tax.

4 Ejected poll watchers and a fella who ran at
5 them with a 4 X 4 temper, cussing and swearing at them.
6 That's what you compare this case to.

7 King versus Sevier, just decided this last
8 July 31st said the Courts should be reluctant to
9 declare an election void. They appreciate that honest
10 mistakes will be made in the context -- conduct of
11 elections. Not every irregularity or even a
12 combination of irregularities will necessitate the
13 invalidation of an election.

14 Law can be boring but I think you see sort of
15 the groundrules for that. I have to talk a little bit
16 about the case here today. I know you've heard it and
17 I'm going to briefly address it for my argument.

18 I started out talking about there was a
19 pattern of election officials that ganged up on
20 Mr. Barnes to cheat him. They didn't prove that.

21 They proved that one lady, Ms. Pace, was a
22 second grade school teacher for 41 years, that she made
23 a mistake. The lady next to her, Sheila Edmondson,
24 said immediately you made a mistake. Ms. Pace said,
25 "I'm sorry, I did, and proceeded to tell the walkers

1 standing in front of them you need to go and look at
2 the sample ballot to determine which primary you want
3 to vote in." They didn't. They didn't.

4 As we went down through each one of those
5 interviews with the county election officials, we
6 refuted every allegation that was in that contest about
7 this theory of election workers ganging up on
8 Mr. Barnes.

9 So then we go to the "Pottysgate" theory.
10 They knew what is going on. Why they put that in this
11 contest, I don't know. Just evidently there wasn't
12 anything else they could find.

13 You heard her explain that she went into the
14 high school, into the entrance of the school; that the
15 voting was going on in the gym, I think and I think I
16 told you what the definition of a polling place is, the
17 room or rooms where voters apply to vote and mark and
18 cast their ballots, not the school.

19 The school is the building that houses the
20 polling place. The polling place is the actual room
21 where they are. That was the gym. Rosalind Kurita
22 never went near the gym.

23 You have her own testimony further she didn't
24 see anybody, she didn't talk to anybody and what else?
25 Did they produce any one person who was inside that gym

1 or that school to say she did something wrong? No.

2 Pretty soon they learned that the "Pottygate"
3 theory was not going to carry. I'm trying to resist
4 cliches.

5 Then they go, this thing about early voting.
6 You heard the early vote thing. The woman goes down to
7 the Election Commission office to early vote. She's on
8 her own testimony without accusations and this
9 Ms. Grizzard, she didn't solicit any votes. She went
10 in to vote and she came out.

11 The only thing that upset the other lady was
12 she had a bunch of cameras with her. Had a bunch of
13 media. Well, if you're a smart candidate that's what
14 you do.

15 You get down close to election day anything
16 you can could to get on television or radio or in the
17 newspaper you want to invite the media to come. You
18 always tell them you're going to early vote. That's
19 good sense.

20 No violation of the early voting location.

21 Are you holding up fingers over there for me?

22 A SPEAKER: You're good.

23 MR. ROCHELLE: It's almost like they say it
24 in the contest about some of these folks, they said it
25 in the affidavits about some of these folks and they

1 keep talking about it today, about these allegations on
2 the election officials.

3 It's like they think that if they keep saying
4 it over and over again you'll come to believe it, or it
5 will mean that things are uncertain because you've
6 heard it so much. Repetition does not the truth make.

7 It's up to you to sort through that type of
8 lawyering. You can't identify where the violations
9 are. You won't find any. They're not there.

10 Now, I don't know whether they don't do this
11 or not. They say they don't want to change anything
12 about party registration so I was ready to argue about
13 that, I guess, and then -- but they file these voter
14 analysis starting earlier in the week saying somehow or
15 another there's something wrong, that Republicans have
16 crossed over and other races.

17 I think you've seen democrats crossover to
18 Republican races. Now, you got a way to do it now.
19 That's appoint a poll watcher. We gave you copies of
20 the statute. Poll watcher can challenge.

21 It goes before the three election officials
22 that were approved by their party for the election
23 place they decide, those three Democratic election
24 officials decide whether or not to let that challenge
25 voter vote.

1 You got to have somebody at the polling
2 place. The only way do you that is to appoint poll
3 watchers. That's how you do it now.

4 How do they suggest we change it in the
5 future? They say they don't want party registration.
6 Great. This is a lousy time to be talking about party
7 registration. It's an off year.

8 Since they didn't bring it up talking about
9 party registration, I'm not going to talk about party
10 registration because I include that in my argument but
11 I don't think it's good for this party, for us to be
12 talking about such a thing right here in the middle of
13 an election. It's dangerous.

14 It can be misrepresented that the Democratic
15 Party stands for something that is not popular at all
16 with the constituents out there, the citizens out there
17 who we got a lot of candidates, lot of Democratic
18 candidates out there trying to get to vote right now.

19 I want to be able to say to a Republican, I
20 want them to be able to say to an Independent come
21 November, I want your vote and I value you. So I'm not
22 going to talk anymore about that.

23 The most hurtful thing I guess to Senator
24 Kurita was this allegation about the Republican
25 Chairwoman in Cheatham County, Ms. Haines, part of this

1 big conspiracy and, you know, you imagine there's three
2 executive committees, they all got members, all got
3 officers, they find Ms. Haines, the only one cited to
4 you.

5 All the rest of the Republicans that you
6 heard about voted for Mr. Barnes. Ms. Burchett, she
7 never voted in a Democratic primarily. Mr. Napolitano,
8 he's a Republican. Said he was when he walked in the
9 door. But they come back to you and they say
10 Ms. Haines.

11 Senator Kurita didn't want to have to tell
12 you about that relationship today because it's a
13 personal relationship and while I understand that, I
14 felt like you needed to know because this is an
15 important case and you set a lot of precedent today.

16 So I made her tell you that.

17 So the fact that one Republican officer out
18 of all of those Republicans who signed up saying I'm a
19 Republican is the only one they could bring in here and
20 that's been addressed to you.

21 They tell me I got four more minutes. I
22 don't know that I got four more minutes to say. Y'all
23 got any questions for me? Anybody got anything you
24 want me to address that we didn't address in the
25 evidence, we're here ready to do so?

1 Well, then, I want to compliment you and
2 these folks sitting back here. You got a tough job.
3 When you ran for this office I don't know whether you
4 knew it envisioned all this sort of stuff.

5 You got a tough job. You heard them say
6 you've got unlimited power. Well, you may have
7 unlimited power. That's a bunch of legalese arguments
8 to make in the future. You got yourselves.

9 Just because somebody got unlimited power
10 does not mean that they should abuse that power. I
11 have confidence in you. That's why we're here today.
12 We have confidence in you to listen to the facts, to
13 apply reasonable interpretations, to listen to the law
14 and to do what the statute calls.

15 Seek justice and fairness. Seek justice and
16 fairness.

17 I don't think the facts construed in any way
18 possible would authorize overturning this election.
19 The people of these three counties have expressed their
20 will.

21 Close vote. She obviously took it for
22 granted. Her polling is running strong. You know how
23 incumbents are, pollers tell you how great you are, how
24 much ahead you are. You start sitting back some. She
25 took it for granted.

1 I understand this is a district that's a
2 borderline district and if we go messing with that
3 thing we could lose it real easily.

4 Senator Kurita has done a good job. She
5 hasn't agreed with everything you wanted, everything
6 you wanted or, Lord knows, she raised the price of my
7 cigarettes out the roof, but she's an independent cuss.

8 She knows that it's important first that she
9 represent her constituents and then she knows that it's
10 important that you be able to answer to yourself, do I
11 feel good about myself, am I satisfied that I have done
12 the best that I can do for the people that I represent
13 and for their children and their children and their
14 children and all the future generations that come on
15 every vote at every opportunity?

16 That's what she's tried to do. We're going
17 to differ. Lord knows we're going to differ. You're
18 going to differ with her occasionally. But she's doing
19 what she was elected to do.

20 We ask you to disallow this contest. Thank
21 you.

22 CHAIRMAN SASSER: Thank you, Mr. Rochelle.
23 Mr. Johnston, I think you have a little less than five
24 minutes.

25 MR. JOHNSTON: Thank you, Mr. Chairman and

1 Members of the Committee, and thank you all very much
2 for being so patient and paying such close attention to
3 the presentations have been made for both sides.

4 The issue really is justice and fairness but
5 the issue is whether or not this particular race under
6 these particular circumstances was incurably uncertain.

7 It's incurably uncertain because of all the
8 reasons that I've just told you, because of all the
9 involvement of hardcore Republicans who vote repeatedly
10 over and over and over again in Republican primaries
11 and never in Democratic primaries, and they did this at
12 the behest of the Lieutenant Governor, the Republican
13 Lieutenant Governor of this State.

14 I know that no matter what Democrat sitting
15 in whatever seat, that Democrat is never going to do
16 something that we all agree with. There are going to
17 be major differences. There are going to be times when
18 we disagree.

19 But that's not what we're talking about here.
20 We're talking about a situation in which the Republican
21 Party starting with the top leader in this State
22 actively sought to involve his party in the choosing of
23 a Democratic nominee for the 22nd District.

24 It worked. He got his folks out and it made
25 the difference. Not only did it work, but he had the

1 assistance, either inadvertently or not, of many of the
2 campaign officials at the various polling places, at
3 least in Montgomery County.

4 Let me address just a few quick things that
5 Mr. Rochelle has raised. He talked about Margaret Pace
6 and how she had completely refuted his word, those of
7 the Walkers.

8 Let me remind you what Ms. Pace did. I've
9 been practicing law for 31 years. I have found
10 repeatedly that the people who aren't telling the truth
11 start attacking the other side and that's exactly what
12 Margaret Pace did.

13 Margaret Pace didn't just sit back and say
14 you know what, you're right, I just made mistakes, I
15 messed it up. No. No.

16 She said that Mr. Walker, he was under the
17 influence of something. He was rude and loud and
18 boisterous. In fact, he was so boisterous I had to
19 look to see if there was a uniformed police officer out
20 there.

21 The only people that were being boisterous,
22 ladies and gentlemen, are the election officials that
23 were saying he's singing he's a jolly good fellow.

24 Maybe that's why Mr. Walker couldn't hear
25 this alleged apology that she says she made. Ms. Pace

1 got caught and she didn't like it and she went after
2 the person that caught her.

3 Now, "Pottygate". Ms. Kurita and Mr.
4 Rochelle made a big joke out of what they call
5 "Pottygate" but, frankly, it isn't a joke. It is not a
6 joke to do this.

7 We showed you earlier, this is what the Court
8 says about that. "No person should be within the
9 100-foot distance and be in a position to have someone
10 believe he may or may not be trying to influence a vote
11 or the operation of the election process."

12 Senator Kurita, Senator Kurita violated that.
13 She violated that trust. There was a School Board
14 member who is right there. What did she do? She went
15 across the street to somewhere else when she went to
16 the bathroom. And you know what? They have never said
17 anything about what was going on with the campaign
18 manager. The campaign manager went in there, too, and
19 he was in there. They've not refuted one thing that
20 we've argued on that.

21 There were 284 --

22 CHAIRMAN SASSER: That's time, Mr. Johnston.

23 MR. JOHNSTON: -- Republicans that made the
24 difference, fifteen times the difference. Thank you.

25 CHAIRMAN SASSER: Before we move on I would

1 like to ask the Members of the Committee to bear with
2 me for just a second. We've got to take care of some
3 legal things to get down.

4 I need a motion to attach as Collective
5 Exhibit 1 to the transcript, today's hearing, the
6 following items: Number 1, Contest of Election; number
7 2, Supplemental Filing Contest of Election; number 3,
8 Senator Kurita's response to Election Contest; number
9 four, Mr. Barnes' witness list; number 5, Senator
10 Kurita's witness list.

11 Also as part of this motion, I'd like you to
12 authorize that we attach as Exhibit 2 to today's
13 transcript, Mr. Barnes' prehearing brief.

14 Also as part of this motion, I'd like to ask
15 the Committee to attach as Collective Exhibit 3 to
16 today's transcript, copy of Senator prehearing brief.

17 Also as part of this motion, I'd like to ask
18 the committee to attach as Collective Exhibit 4 to
19 today's transcript copy, all the witness interview
20 transcripts, and also as part of this very lengthy and
21 motion attached as Exhibit 5 to today's transcript, a
22 copy of the agreed rules as amended, and we're doing
23 this so we can have a good record of the case for
24 anybody who might want to read that after we're done.

25 Can I have such a motion?

1 A SPEAKER: So moved.

2 CHAIRMAN SASSER: Is there a second?

3 A SPEAKER: So moved.

4 CHAIRMAN SASSER: Yes.

5 MR. THOMPSON: We had two briefs. There's
6 just one exhibit here.

7 CHAIRMAN SASSER: We got everybody in the
8 Committee in favor, aye. Opposed?

9 Quickly some instructions for the Committee.
10 After consultation with counsel for the Tennessee
11 Democratic Party, and after consultation with Mr. Brook
12 Thompson, State Coordinator of Elections, this
13 Committee can really make one of three recommendations:

14 First, this committee can certify the results
15 as they stand, declare Senator Kurita the nominee.

16 Second, the Committee can overturn the
17 results and declare Mr. Barnes the nominee.

18 Third, this Committee could, quote, set aside
19 the results of the election and require the three
20 counties involved, which would be Cheatham, Houston and
21 Montgomery Counties, to hold a joint convention and
22 that joint convention would determine the nominee.

23 According to the rules adopted by the State
24 Primary Board and agreed to by Senator Kurita and
25 Mr. Barnes, this Committee and the Primary Board as a

1 whole may decide the following in addition to any other
2 relevant questions: Number one, whether more probably
3 than not the number of votes placed in question as a
4 result of the improper, illegal and/or fraudulent acts
5 complained of, if true, exceeded the margin between the
6 total number of votes cast for the contestee, the total
7 number of votes for the contestant; number two,
8 whether, more probably than not, there is sufficient
9 evidence of improper, illegal and/or fraudulent acts
10 which so permeated the primary election as to render
11 the outcome of the election incurably uncertain, even
12 though it cannot be shown to mathematical certainty
13 that the result might have been different.

14 Finally, I'd like to admonish both this
15 Committee and the entire State Primary Board that any
16 decision reached today should be based on the evidence
17 presented today and not on any pre-existing opinions of
18 Mr. Barnes or Senator Kurita.

19 So, we're going to open it up to the
20 Committee. You could ask for a motion and discussion
21 for a --

22 A SPEAKER: Move --

23 CHAIRMAN SASSER: Is there any discussion
24 among --

25 A SPEAKER: I didn't hear the motion.

1 CHAIRMAN SASSER: I was asking if the
2 Committee has a motion, if we have a motion on the
3 Committee that we can then discuss that motion.

4 MR. OWEN: I have a motion. Thank you
5 Mr. Chairman, thank everyone for staying so long.

6 The purpose of this subcommittee was to allow
7 the lawyers to present the case and have questions
8 asked on -- by a limited number of people and that way
9 it would hopefully expedite the matter a little bit.

10 Now we're going to, I guess, the idea is that
11 we discuss among ourselves and then we report to the
12 full committee and then discuss with the full
13 committee. The full committee is already here.

14 I would move that we, as a subcommittee, go
15 out of existence and refer everything back to the full
16 committee since everyone is already here and allow the
17 members of the full committee to, the full Primary
18 Board who have been here all this time to have a chance
19 to comment themselves, otherwise they won't be able to
20 comment until we get into a full meeting and just
21 extend everything.

22 CHAIRMAN SASSER: Thanks Bill. I'll note
23 that we did approve the rules of this when we started.
24 It was designed so that this discussion would be fully
25 open and we want everybody -- again, I encourage

1 everybody in the State Primary Board to hear our
2 deliberation.

3 Once we make the decision, we will then
4 report it out as designed to the entire Primary Board.

5 At that point, it will be a motion from the
6 Committee. The entire Primary Board then would have a
7 chance, just like we do, to discuss the motion, to
8 amend, adopt or reject the motion and do anything they
9 want to do.

10 I do think, in my Chairman's opinion, I think
11 the procedure we have in place works well. As I said,
12 it's been agreed to by the parties involved and I would
13 encourage this Committee, let's get to work here, make
14 a determination.

15 I'm sorry. Mr. Owen did offer a motion. Is
16 there a second?

17 MR. FORRESTER: I'll second.

18 CHAIRMAN SASSER: All in favor of Bill's
19 motion, aye?

20 Can you raise your hand on the Committee?
21 Opposed? Can y'all raise your hands? I got three in
22 favor, four opposed.

23 Sandra, are you going to vote? I think
24 according to my count, I have three in favor of the
25 motion and everyone else opposed, so this Committee

1 will make a recommendation.

2 Is there a motion on the Committee?

3 MS. HARRIS: Can I ask you a question? Can
4 you elaborate a little bit on the -- would you
5 elaborate a little bit, Gray, or somebody on the
6 convention process that the three counties would have
7 if that decision were to be one that we come to today?

8 CHAIRMAN SASSER: I'd be glad to. If it's
9 okay with counsel, I'll let you describe it as
10 described in the letter we got from Brook Thompson, the
11 State Coordinator of Election. And the letter that
12 Brant is about to reference is in everyone's pack.

13 MR. PHILLIPS: Thank you, Mr. Chairman.

14 To answer your question, Ms. Harris, the
15 process that we inquired of the State Coordinator of
16 Elections about was what procedure should the State
17 Primary Board follow in the event that it determines
18 that the evidence supports voiding the election
19 results.

20 We were advised by Mr. Brook Thompson who, as
21 a part of his recommendation back to us, consulted with
22 the Attorney General's Office about what procedure
23 should be used.

24 That procedure is set out in the letter that
25 he provided to us and that everyone should have in

1 their packet. Specifically, it talks about the
2 procedure that is outlined in Tennessee Code Annotated
3 Section 2-13-204 (b)(4) which would allow us in the
4 event of a voided election to return the matter to
5 the -- to a joint convention of the Executive
6 Committees of the Democratic parties of Houston,
7 Cheatham and Montgomery.

8 That meeting, that joint convention would
9 need to be called by the Chairman of the Montgomery
10 County Democratic Party within ten days of any decision
11 of this body. And they would then, through a joint
12 convention process, select a nominee.

13 And that needs to be certified to the State
14 Election Commission by September the 25th in order for
15 it to be on the ballot.

16 MR. ROCHELLE: Mr. Chairman, could I ask
17 counsel to point out that before you start filling the
18 seat, you have to vote to overturn the election?

19 If you don't vote to overturn this election,
20 there's no need --

21 CHAIRMAN SASSER: We'll point that out, Mr.
22 Rochelle. You had ample opportunity to argue your
23 case. You had ample opportunity to argue the case.
24 This now is a meeting of the Committee. The Committee
25 is going to decide.

1 MR. PHILLIPS: I thought that I had made that
2 clear in my explanation, that that process would only
3 be available to the body in the event that the body
4 determined collectively that the evidence supported
5 voiding the election, and only in that event.

6 CHAIRMAN SASSER: Now, I've also been advised
7 we can have some informal discussion about the evidence
8 prior to having a motion. Entertain a motion or
9 continue to have discussion as a committee about what
10 we might or might not like to do.

11 MR. HARPER: Mr. Chairman, I'm David Harper
12 from the 17th, and I've heard a lot of good evidence
13 today and I have a lot of heartburn with a convention.

14 I've seen those go really bad, and having
15 said all that, I'd like to make a motion that the
16 election stand as certified.

17 CHAIRMAN SASSER: There's a motion that the
18 election stand as certified. Is there a second on
19 that?

20 MR. CHEEK: I'll second that.

21 CHAIRMAN SASSER: Let the record reflect that
22 Mr. Harper voted and Mr. Cheek seconded it. Let's call
23 the role on this Committee.

24 MR. OWEN: Discussion on that motion?

25 CHAIRMAN SASSER: Any discussion of that

1 motion?

2 MR. MAYNARD: I don't know whether it's
3 appropriate for somebody from the Primary Board to ask
4 a point of order.

5 CHAIRMAN SASSER: I think if it's okay with
6 you, Mr. Maynard, the way we can handle that, once the
7 Committee has a report and I think it would be
8 appropriate to question the Committee about that.

9 MR. MAYNARD: Can I say the point of order,
10 you can ignore it, Mr. Chairman, and I deeply respect
11 you and your time. I appreciate you.

12 I see the look on your face, Gray. As your
13 friend, let me say it and you can tell me shut up. If
14 y'all establish a threshold for overturning this
15 election and --

16 CHAIRMAN SASSER: Again, there's two
17 standards that have been enunciated among the
18 Committee. Just to clarify them, the two standards
19 are -- and both of these have been agreed to by
20 counsel.

21 Whether more probably than not the number of
22 votes placed in question as a result of the improper,
23 illegal and/or fraudulent acts complained of, if true,
24 exceeded the margin between the total number of votes
25 cast for the contestee, the total number of votes for

1 the contestant; number two, whether more probably than
2 not there is sufficient evidence of improper, illegal
3 and/or fraudulent acts which so permeated the primary
4 election as to render the outcome of the election
5 incurably uncertain, even though it cannot be shown to
6 mathematical certainty that the result might have been
7 different.

8 MR. MAYNARD: The reason why I ask that
9 question, Mr. Chairman, the point of order, are y'all
10 then voting on whether, since the burden of proof is on
11 Mr. Barnes, that he has not met those two thresholds?

12 Are y'all voting on that?

13 CHAIRMAN SASSER: I think that would be
14 implicit in the motion if the Committee votes that
15 to -- if the Committee votes that to uphold or to
16 certify the election results as Senator Kurita as the
17 winner, I think that would be implicit in the vote that
18 Mr. Barnes has not met his burden of proof.

19 Because I understand it, we have a motion on
20 the table. There is a second from the Committee. Is
21 there any discussion of that motion on the Committee?

22 Ms. Ables?

23 MS. ABLES: I'll be right back.

24 CHAIRMAN SASSER: Is there any discussion of
25 the motion?

1 MR. CHEEK: Just vote.

2 CHAIRMAN SASSER: We have a majority of votes
3 to pass the motion, majority of people. Takes six
4 votes to pass the motion.

5 I'm going to start it. Mr. Harper?

6 MR. HARPER: Yes.

7 CHAIRMAN SASSER: Ms. Perkinson?

8 MS. PERKINSON: No.

9 CHAIRMAN SASSER: Mr. Owen?

10 MR. OWEN: Pass.

11 CHAIRMAN SASSER: Ms. Davis?

12 MS. DAVIS: No.

13 CHAIRMAN SASSER: Mr. Farmer?

14 MR. FARMER: No.

15 CHAIRMAN SASSER: Mr. Forrester?

16 MR. FORRESTER: Pass.

17 CHAIRMAN SASSER: Mr. Cheek?

18 MR. CHEEK: Yes.

19 CHAIRMAN SASSER: Mr. Woods?

20 MR. WOODS: No.

21 CHAIRMAN SASSER: Ms. Parker?

22 MS. PARKER: No.

23 CHAIRMAN SASSER: So it seems there's not six
24 votes to pass the motion, the motion fails.

25 Is there any additional discussion among

1 ourselves?

2 MR. OWEN: I may move to take a five minute
3 recess.

4 CHAIRMAN SASSER: I'm happy to give everybody
5 five minute recess. I would remind --

6 A SPEAKER: No. No.

7 MR. OWEN: Even my motions aren't going
8 anywhere.

9 CHAIRMAN SASSER: Is there another motion?

10 KIM SASSER HAYDEN: Is there another motion
11 on the floor?

12 CHAIRMAN SASSER: Anybody on the Committee
13 have any discussion?

14 MS. DAVIS: I guess my question is, it's been
15 sent back you said for convention, that we have that
16 alternative.

17 Has that ever taken precedence before that we
18 know of?

19 CHAIRMAN SASSER: My understanding is and I
20 don't know if it's ever taken -- I'm not sure it's ever
21 happened under these circumstances. There has been
22 conventions used to select nominees from time to time.

23 In fact, a member of this Committee has been
24 selected by a convention, if I'm not mistaken.

25 MR. OWEN: Executive Committee.

1 CHAIRMAN SASSER: It is not -- it has
2 happened before, yes. Mr. Farmer.

3 MR. FARMER: Mr. Chairman, I move that we set
4 the convention -- send it to the convention of the
5 three counties that are involved of Cheatham,
6 Montgomery and Houston County. Order them as a Primary
7 Board for them to call for the -- be nominated by those
8 conventions.

9 MS. DAVIS: Second.

10 CHAIRMAN SASSER: There's a motion to second.
11 Mr. Farmer made a motion, Ms. Davis seconded it. Let
12 me confer with counsel for one second.

13 (Discussion off the record.)

14 CHAIRMAN SASSER: In order to take such an
15 action, this body would have to decide that the
16 election results were incurably uncertain.

17 Would you be willing to amend your motion so
18 that this Committee would state that the election
19 results were incurably uncertain and refer it back to
20 the counsel?

21 MR. FARMER: I would move that they be
22 incurably uncertain, the results of the election, and
23 they be moved back to the conventions.

24 CHAIRMAN SASSER: There's a motion. A
25 second? You're going to have plenty of time to address

1 this after we get through here today.

2 You're not a member of this committee, Mr.
3 Rochelle. You had a chance to make your case. I'm
4 sorry.

5 MR. ROCHELLE: It's not going to do any good
6 afterwards. I have information that I think would be
7 beneficial to you.

8 CHAIRMAN SASSER: Anybody at this Committee,
9 Mr. Rochelle, wants to ask you a question, you can --
10 they can ask you a question. Right now we have a
11 motion on the table and a second and it's time for
12 discussion of that motion.

13 MR. OWEN: Pursuant to that motion, I have a
14 question, Mr. Chairman. Regarding the letter from
15 Election Coordinator Brook Thompson -- is Mr. Thompson
16 still in the audience?

17 CHAIRMAN SASSER: No.

18 MR. BARRETT: He's hiding back there.

19 MR. OWEN: My concern, this race or this
20 contest -- I have a personal interest in this because
21 my nephew is with the 101st Airborne and he can't be
22 here because he's in Afghanistan, and I am very
23 concerned about when we are able to mail out the
24 overseas ballots for military and overseas, the
25 military and overseas ballots and the requirement that

1 this be done by September the 20th.

2 And the letter says that the relevant County
3 Election Commission by September 15th, they must -- by
4 September 15th realize the counties involved will have
5 to mail out the military and overseas ballots without
6 the office -- with the office having a write-in line
7 for the candidate space, and this is one of the most
8 important elections for the coming century and these
9 people are over there fighting so we have the right to
10 be here and pontificate all day long. I am concerned
11 about that.

12 Mr. Thompson, if there is a convention or a
13 County Executive Committees, if they meet this week,
14 will you be able to include or would the ballot be able
15 to include whomever is the nominee on this?

16 CHAIRMAN SASSER: Brook, if you can answer
17 that question quickly. First of all, I'd like to thank
18 Brook Thompson for being here today and listen to all
19 the testimony.

20 MR. BROOK THOMPSON: Mr. Chairman, as we
21 have, I think repeatedly said from our office, the
22 closer we get to a deadline, the more difficult it is
23 for us to ensure that the process moves forward in a
24 way that doesn't jeopardize the election.

25 We said the 15th and the question from

1 Senator Owen, I believe is, what day do we have to have
2 a name. We are under a statutory duty the get them out
3 by the 20th, which is next Saturday.

4 We have differing needs in different
5 counties. In Montgomery County we have a couple
6 thousand military ballots that have to be sent out.
7 We can't give them a name on Friday and have them
8 printed and have them all stuffed and sent out. It
9 doesn't work that way.

10 In Cheatham, Houston County we might could
11 get the names a little later and still comply with
12 that. If we don't have a name by Monday, Tuesday, we
13 will be forced to send out military and overseas
14 ballots without a name on there and if we get a name
15 subsequent to that, we will do what we can to send out
16 a subsequent ballot.

17 The further we go the more difficult it gets
18 for us to mail and get back ballots from overseas
19 personnel.

20 MR. OWEN: Mr. Chairman, it's my
21 understanding, Mr. Thompson, that in the Shelby County
22 primary earlier this year, you were able to delay
23 sending the ballots out and then delay getting them
24 back and counting them.

25 Could you elaborate a little bit on that

1 situation?

2 MR. BROOK THOMPSON: We were delayed in
3 sending ballots out with the Presidential primary. We
4 were then sued by the United States Department of
5 Justice and came to an agreement where we could accept
6 ballots for a few days after election day.

7 That was because we were dealing with the
8 Presidential primary, with the Presidential race. We
9 do not want to get in a position where we're not
10 meeting the 45 day deadline. That's what happened to
11 us in February because of a variety of factors.

12 We need to send out Presidential election
13 ballots by the 20th of September and we're going to do
14 that so that we meet the law, and if we have to
15 follow-up later with other things or try to send a
16 separate ballot a second time, we're going to do what
17 we have to do if we don't have a name by the time we
18 have to start sending out these ballots.

19 MR. OWEN: 2000 sounds like a lot. 2000 is
20 not really that much. Kinko's can print that off in a
21 half hour. I don't mean to be flippant on this. I do
22 think this is a very, very important issue.

23 MR. BROOKS THOMPSON: I couldn't agree more.

24 We take very seriously our legal
25 responsibilities with the military and overseas voters.

1 That's one reason why we have insisted that we got to
2 send the ballots out by the 20th.

3 Now, I can't stand here and tell you if you
4 give me a name on Wednesday that we might get real
5 lucky and be able to get it all done. I don't know.

6 I'm just telling you everyday that goes by
7 makes it less likely that we can make it happen in an
8 early fashion.

9 CHAIRMAN SASSER: Mr. Thompson, just to
10 clarify, is there any Republican you know on the ballot
11 in the State Senate race in the election?

12 MR. BROOKS THOMPSON: It is an uncontested
13 race. There are no Republicans or Independents
14 qualified to appear on the ballot.

15 CHAIRMAN SASSER: We have a motion and
16 second. Any further discussion on this motion?

17 MR. CHEEK: I have a question. I thought
18 Mr. Barnes got write-ins on the Republican side of the
19 ballot. Would he not be the Republican nominee? I'm
20 just curious. I'm just asking.

21 CHAIRMAN SASSER: Mr. Thompson, if you want
22 to respond to that question.

23 MR. CHEEK: I couldn't help myself.

24 MR. BROOKS THOMPSON: First of all, anybody
25 that wants to have the write-in ballots counted has to

1 file a certification to have them counted.

2 Secondly, in order to gain the party
3 nomination, you have to receive five percent of the
4 registered voters of the district in order to be a
5 party nominee by the write-in method.

6 MR. CHEEK: Is that new?

7 MR. BROOKS THOMPSON: Used to be five
8 percent of the people voting in the primary. Now it's
9 five percent of the registered voters in that district.

10 MR. CHEEK: Why?

11 CHAIRMAN SASSER: Okay. There's a motion,
12 there's a second for that motion. Is there any
13 discussion?

14 MR. FORRESTER: Would you read the motion
15 again, Mr. Chairman?

16 CHAIRMAN SASSER: The motion is, that this
17 election was so incurably uncertain, that the results
18 of this election were so incurably uncertain that we
19 hereby recommend that it be referred back to the County
20 Executive Committees of Cheatham, Houston, Montgomery
21 County to select a nominee.

22 Is there any other discussion on this motion?

23 MR. CHEEK: Can we separate those questions?
24 Wouldn't it make more sense to separate the questions?

25 CHAIRMAN SASSER: If we declare the election

1 as incurably uncertain, then the election is thus void.
2 If we do not send it back to the counties to pick a
3 nominee, how would you suggest that a nominee be
4 selected?

5 MR. CHEEK: By the folks right here in this
6 room. There's some discussion here on this end of the
7 table that you're not hearing that folks are
8 interested --

9 CHAIRMAN SASSER: It would be very helpful if
10 there's any discussion that y'all grab a microphone so
11 I can hear it.

12 MR. CHEEK: I'm sorry, Gray. There's been
13 some discussion over here that it probably makes some
14 sense to go ahead and get this thing over with today,
15 we've got the power to do it, we don't have to worry
16 about the military.

17 Some people think it's kind of a cop-out, I
18 guess. I'm kind of one of them.

19 CHAIRMAN SASSER: Okay. Well, I think then
20 you might want to vote against the motion that
21 Mr. Farmer has made.

22 MR. CHEEK: Well, I shall.

23 MS. ABLES: I have a question, Gray. If this
24 motion carries and we send this back to those counties
25 to make this decision, if there are reports of

1 irregularities or a problem with the vote there, would
2 it not come back to us again?

3 CHAIRMAN SASSER: I think there's a chance,
4 Ms. Ables, that I'm going to be seeing a lot more of
5 this election irregardless of whatever action we take
6 here today.

7 Judging by the number of lawyers in this
8 room, I think we're going to be dealing with this
9 contest for several more weeks.

10 MR. MULLINS: Can we ask one question for
11 clarity?

12 CHAIRMAN SASSER: If we can get this motion
13 done Mr. Mullins -- once we pass this motion we'll open
14 it up. Y'all can ask as many --

15 A SPEAKER: We're hearing double things,
16 convention and election. If this motion that's on this
17 table now fails, is what Will just suggested a real
18 possibility?

19 MR. OWEN: That's up to the Committee.

20 CHAIRMAN SASSER: If this motion fails, no.
21 It becomes -- we've got --

22 MR. FORRESTER: Mr. Farmer has indicated,
23 Gray, that he will accept a friendly amendment to his
24 motion. Mr. Farmer has indicated that he would accept
25 a friendly amendment to parse the question, parse the

1 motion, hear the question of the incurably uncertainty
2 first and then the issue of where the election would
3 take place.

4 You've made the motion. Do you accept that?
5 He'll accept that amendment to his motion.

6 CHAIRMAN SASSER: I've been advised by
7 counsel the difficulty with declaring the election
8 incurably uncertain and then selecting a nominee, that
9 does not necessarily comply with Federal case law
10 that's out there.

11 If we declare the election incurably
12 uncertain, then we have some leeway and latitude in
13 sending it back to the counties. If we declare,
14 however, the election void, which is somewhat of a
15 higher standard, then we can select the nominee.

16 If we declare the election -- again -- is
17 that correct? No. I'm sorry. Please disregard what I
18 said.

19 MR. PHILLIPS: I don't mean to insert myself
20 but let me try to explain the process as I understand
21 from consulting with the State Election Coordinator as
22 well as my understanding of the law that arguably
23 applies to this situation, the statutes that apply to
24 the situation, the process that should be in place.

25 The body should decide, the subcommittee as a

1 part of its reporting recommendation process should
2 make a decision about whether or not the majority of
3 its members believe that the evidence shown here today
4 or offered here today by the parties renders the result
5 of the election, the certified result of the election
6 incurably uncertain.

7 If it reaches that decision, it should then
8 decide if it wants to void the election. If it wants
9 to void the election, then, as I understand, the advice
10 that we've been given by Mr. Thompson's office and
11 indirectly through him from the Attorney General's
12 Office, that the process, the only process by which a
13 new nominee would be selected or could be selected if
14 the election is voided is through the County
15 Convention.

16 If there are any questions about that in
17 terms of the process, I'm here and happy to answer
18 them.

19 MR. FORRESTER: Mr. Chairman, I'll withdraw
20 my friendly amendment.

21 MR. OWEN: Point of clarification.
22 Mr. Phillips, you just said County Convention. When
23 you say "County Convention", are you talking about the
24 County Executive Committee meeting or the counties
25 calling a convention of all the Democrats in the county

1 and having the Democrats show up at a convention?

2 MR. PHILLIPS: The statute that we have been
3 advised would apply involves or contemplates a Joint
4 Convention of the County Democratic Party Executive
5 Committees only.

6 Those would be the only persons who would
7 vote to decide who the nominee would be, would be the
8 persons who are duly elected members of those three
9 County Executive Committees.

10 A SPEAKER: Call for the question.

11 CHAIRMAN SASSER: Thank you. I'm going to
12 start with Mr. Harper.

13 MR. HARPER: No.

14 CHAIRMAN SASSER: Ms. Perkinson?

15 MS. PERKINSON: Yes.

16 CHAIRMAN SASSER: Mr. Owen?

17 MR. OWEN: Pass.

18 CHAIRMAN SASSER: Ms. Davis?

19 MS. DAVIS: Yes.

20 CHAIRMAN SASSER: Mr. Farmer?

21 MR. FARMER: Yes.

22 CHAIRMAN SASSER: Mr. Forrester?

23 MR. FORRESTER: Yes.

24 CHAIRMAN SASSER: Mr. Cheek?

25 MR. CHEEK: No.

1 CHAIRMAN SASSER: Mr. Woods?

2 MR. WOODS: No.

3 CHAIRMAN SASSER: Is that a no? I didn't
4 hear. Mr. Woods, I'm sorry, what did you vote?

5 MR. WOODS: No.

6 CHAIRMAN SASSER: Ms. Ables?

7 MS. ABLES: Yes.

8 CHAIRMAN SASSER: Ms. Parker?

9 MS. PARKER: Yes.

10 CHAIRMAN SASSER: That's six. The motion
11 carries.

12 Everybody bear with me for another moment.
13 Okay. I hereby reconvene the State Primary Board to
14 report out the recommendation of the Special Committee.

15 The Special Committee has voted and approved
16 a motion whereby the election was incurably uncertain
17 and agreed to refer it back to the County Executive
18 Committees of Houston, Montgomery and Cheatham County
19 to determine a nominee.

20 That is the report.

21 MR. OWEN: Mr. Chairman, I apologize but --

22 CHAIRMAN SASSER: The committee will now
23 disband. Mr. Bassett.

24 MR. BASSETT: I move that we accept the
25 report of the Committee.

1 CHAIRMAN SASSER: There's a motion to accept
2 the report of the Committee. Is there a second?

3 A SPEAKER: Second.

4 CHAIRMAN SASSER: All in favor, aye? We're
5 going to -- I want to call the roll.

6 A SPEAKER: What about discussion?

7 CHAIRMAN SASSER: I'm sorry, is there any
8 discussion?

9 MS. PATTERSON: I just say it's a shame that
10 we're going to disenfranchise 9,000 voters. It's going
11 to -- I'm sorry, my name is Mary Patterson.

12 I've sat through this like all of you today.
13 I've listened. And my peak concern is that we do not
14 disenfranchise 9,000 voters and I think that's going to
15 be a real crime if we're not very careful about this,
16 and we will have a lot of people saying look at the
17 Democrats, they're over there fighting with each other
18 and they're going to not be -- ignore what the people
19 voted.

20 We may not like open primaries but that's
21 what we have in this state and until we change the law,
22 I don't know how we can say, because a lot of
23 preponderance of this evidence was based on Republicans
24 muddying up our primaries.

25 I'm sorry. I just can't see that.

1 CHAIRMAN SASSER: Any further discussion?

2 MR. MAYNARD: Thank you Mr. Chairman. Jerry
3 Maynard, Senate District 19.

4 I speak because I'm concerned about the
5 precedent that the Democratic Party will be setting in
6 the Executive Committee, especially when we have a
7 Fifth Congressional District and other districts where
8 Republicans can't win dog catcher in the 5th District
9 and that Republicans didn't vote in the 5th District,
10 especially on off year Congressional races.

11 When there's no competitive Republican
12 primary, they voted the 5th District. And I will say
13 to you, you we will be setting the precedent for the
14 person who may have lost who was a more progressive,
15 more liberal Democrat who is running in the
16 Congressional District and we have a more conservative
17 Democrat to win the election because we have more
18 Republicans voting in that Congressional primary that
19 would then offset what then may occur, may occur with
20 Mr. Barnes' counsel was able to show similarly with the
21 percentages, high percentages.

22 So before we take the vote, I just want this
23 Executive Committee to understand that we have many
24 districts where Republicans vote in the primaries
25 because Republicans can't win those general elections,

1 and if someone is disgruntled, they can come back to
2 this Executive Committee.

3 And if we vote to support this -- you know,
4 doesn't matter with me whether we vote for it or not.
5 I'm concerned about precedent. You will have other
6 contested elections based on the precedent that we're
7 setting today which is that we have too many
8 Republicans voting.

9 If we're going to do that, we should then
10 further at the next meeting determine what the
11 threshold is for too many Republicans and when is it
12 that you're muddying up the waters and when do you have
13 a little dirt sprinkled in the water?

14 Because if it's 8 percent, fine, if it's
15 22 percent, that's too many. We need to make sure it's
16 clear what the threshold is for overturning an election
17 because too many Republicans voted in the primary.

18 I hope you would give that consideration
19 before you vote.

20 CHAIRMAN SASSER: Thanks, Mr. Maynard.

21 MS. CLARKE: I'm Maryanna Clarke. I
22 represent the 18th District. You know, we're all aware
23 of Senator Kurita's unfortunate vote that has gotten so
24 many of us angry.

25 What troubles me is that the contestant's

1 counsel has brought it up several times, and I don't
2 think it should have been an issue in this particular
3 vote, what troubles me is that looks more to me like
4 we're voting not for fairness but for retribution and
5 that really upsets me, upsets me a lot.

6 CHAIRMAN SASSER: I would caution anybody who
7 is not a member of the Executive Committee please let
8 us have a conversation.

9 A SPEAKER: I'm a voter in the district.
10 You're taking my vote away because you guys won't sit
11 and do your job and that's it.

12 A SPEAKER: Sit down.

13 CHAIRMAN SASSER: Mr. Jessee.

14 MR. JESSEE: Mr. Chairman, Members of the
15 Commission, I sat and listened to all this. I happen
16 to be one of those fellas that represent people that
17 are accused of some of the crimes that Senator Kurita
18 talks about in her campaign and, Jerry, I respect what
19 you have to say.

20 I live up on the end of the state where the
21 Republicans run everything and when the election starts
22 with their leader saying we're going to influence our
23 election, it ends there. There is no reason for us to
24 even question what has been presented. They influenced
25 our election. They intended, they ran in and they

1 changed the result.

2 Now, we all know that the Tennessee people
3 crossover, for whatever reason, but I have yet, even up
4 on our end to have the party announce at the beginning
5 by its leader that we're going over to their side and
6 vote to influence their election. That's what they
7 did.

8 The other thing that bothers me very much is
9 nobody said in the argument that Senator Kurita made --
10 we keep talking about well, she just went in the
11 building.

12 Read the statute. It doesn't say you can't
13 go into the polling place area, it says into the
14 building where the polling is going on.

15 That young man who has been accused of
16 trespassing or that young convicted misdemeanor person
17 who goes back to Wal-Mart because he has to pee but
18 he's on probation for stealing from them, will then
19 spend 30 days in jail because that's the law.

20 She knew better than to go in that building.

21 Now, it is the appearance of impropriety that
22 we also have to be careful of. The appearance of
23 impropriety started with Lieutenant Governor Ramsey
24 when he made the announcement he's going to mess in our
25 election and it continued through Senator Kurita going

1 in the building.

2 So I suggest that we uphold the vote of the
3 Committee and send it back and let's do it right this
4 time.

5 CHAIRMAN SASSER: Any further discussion?
6 Ms. Ables?

7 MS. ABLES: In response to Mr. Maynard's
8 comments about setting precedent, I understood that
9 this was certainly not the first time that a primary
10 challenge has come to this Primary Board.

11 This has happened before and we even have
12 Supreme Court cases that are cited where -- when they
13 are for decision. And so it's certainly not the first
14 case.

15 My second point is that we are elected to
16 represent Democratic voters. We are the Democratic
17 Executive Committee. Of course we're concerned about
18 fairness because we've been on the end of no fairness
19 in many elections.

20 But the fact of the matter remains our job is
21 to protect the integrity of the Democratic process as
22 it pertains to Democrats.

23 So, therefore, I call for the question.

24 A SPEAKER: I was recognized and I would like
25 to speak very briefly. We heard many hours of evidence

1 today.

2 The standard is whether or not the outcome of
3 the election is incurably uncertain. I think that Ms.
4 Kurita's side, Senator Kurita's side more than rebutted
5 the evidence presented by Mr. Barnes' side and
6 Mr. Barnes, I think, failed to meet his burden of
7 proof, and therefore I'm going to vote against the
8 motion.

9 But I don't feel that Mr. Barnes has met his
10 burden of proof and I think that we could safely, after
11 hearing all the evidence, vote against the motion.

12 Thank you.

13 CHAIRMAN SASSER: Thank you. Question has
14 been called for. Let's call the role.

15 A SPEAKER: Could the Chair explain the
16 motion one more time to everybody?

17 CHAIRMAN SASSER: Is it possible to get the
18 motion read back to me?

19 It's a motion to adopt the recommendation of
20 the Committee.

21 KIM SASSER HAYDEN: Paula Combs? Larry
22 Mullins?

23 MR. MULLINS: Abstain.

24 KIM SASSER HAYDEN: Charline Kilpatrick?

25 MS. KILPATRICK: Yes.

1 KIM SASSER HAYDEN: Is that a yes?

2 MS. KILPATRICK: Yes.

3 KIM SASSER HAYDEN: Weldon Markham? Mary
4 Anglin?

5 MS. ANGLIN: No.

6 KIM SASSER HAYDEN: Terry Lee? Kathy
7 Parrott? Marty Taylor? Brenda Ables?

8 MS. ABLES: Aye.

9 KIM SASSER HAYDEN: Fred Hobbs?

10 MR. HOBBS: Yes.

11 KIM SASSER HAYDEN: Paul Davis?

12 MR. DAVIS: Yes.

13 KIM SASSER HAYDEN: Betty Fraley?

14 MS. FRALEY: Yes.

15 KIM SASSER HAYDEN: Geeta McMillan?

16 MS. MCMILLAN: No.

17 KIM SASSER HAYDEN: Carol Garner?

18 MS. GARNER: Yes.

19 KIM SASSER HAYDEN: John Wiseman?

20 MR. WISEMAN: Yes.

21 KIM SASSER HAYDEN: David Harper?

22 MR. HARPER: No.

23 KIM SASSER HAYDEN: Mary Patterson?

24 MS. PATTERSON: No.

25 KIM SASSER HAYDEN: Bill Bassett? Maryanna

1 Clarke?

2 MS. CLARKE: No.

3 KIM SASSER HAYDEN: Inez Crutchfield?

4 MS. CRUTCHFIELD: No.

5 KIM SASSER HAYDEN: Jerry Maynard?

6 MR. MAYNARD: No.

7 KIM SASSER HAYDEN: Bruce Johnston? Sue

8 O'Dell? Angie Cannon?

9 MS. CANNON: Yes.

10 CHAIRMAN SASSER: I'm sorry, I didn't hear.

11 Sue, did you vote?

12 MS. O'DELL: I said no.

13 KIM SASSER HAYDEN: You said no. Okay.

14 sorry. Chip Forrester?

15 MR. FORRESTER: Yes.

16 KIM SASSER HAYDEN: Will Cheek?

17 MR. CHEEK: No.

18 KIM SASSER HAYDEN: Doris Medlin?

19 MS. MEDLIN: Yes.

20 KIM SASSER HAYDEN: Keith Jackson? Martha

21 Brooke Perry? John Fail?l?

22 MR. FAILL: Yes.

23 KIM SASSER HAYDEN: Elisa Parker?

24 MS. PARKER: Yes.

25 KIM SASSER HAYDEN: Paige Burcham-Carlton?

1 MS. BURCHAM-CARLTON: Yes.

2 KIM SASSER HAYDEN: Robert Patterson?

3 MR. PATTERSON: Yes.

4 KIM SASSER HAYDEN: J.W. Hampton?

5 MR. HAMPTON: Yes.

6 KIM SASSER HAYDEN: Martha Shepard?

7 MS. SHEPARD: No.

8 KIM SASSER HAYDEN: Diane Davis?

9 MS. DAVIS: Yes.

10 KIM SASSER HAYDEN: Michael Kiddy?

11 MR. KIDDY: Yes.

12 KIM SASSER HAYDEN: Don Farmer?

13 MR. FARMER: Yes.

14 KIM SASSER HAYDEN: Patsy Johnson?

15 MS. JOHNSON: Yes.

16 KIM SASSER HAYDEN: Jay Bailey?

17 MR. BAILEY: Yes.

18 KIM SASSER HAYDEN: Gale Carson? Henry

19 Hooper? Joyce Moore Adams? Pamela Harris? Tom

20 Jessee?

21 MR. JESSEE: Yes.

22 KIM SASSER HAYDEN: Hazel Longstreet?

23 MS. LONGSTREET: Yes.

24 KIM SASSER HAYDEN: David Upton?

25 MR. UPTON: Yes.

1 KIM SASSER HAYDEN: Leslie Byrd? Joe
2 Weinberg? Gladys Crain?

3 MS. CRAIN: Yes.

4 KIM SASSER HAYDEN: Roger Warmath?

5 MR. WARMATH: Yes.

6 KIM SASSER HAYDEN: Sidney Chism? Hazel
7 Moore? Joyce Hopson?

8 MS. HOPSON: Yes.

9 KIM SASSER HAYDEN: Bruce Seal? Beth
10 Hickman? Mike Toomey?

11 MR. TOOMEY: Yes.

12 KIM SASSER HAYDEN: Harold Woods?

13 MR. WOODS: Yes.

14 KIM SASSER HAYDEN: Sylvia Woods?

15 MS. WOODS: Yes.

16 KIM SASSER HAYDEN: Gayle Alley?

17 MS. ALLEY: No.

18 KIM SASSER HAYDEN: Bill Owen?

19 MR. OWEN: Pass.

20 KIM SASSER HAYDEN: Dan Lawson? Barbara
21 Wagner?

22 MS. WAGNER: Yes.

23 KIM SASSER HAYDEN: Jim Bilbo?

24 MR. BILBO: Yes.

25 KIM SASSER HAYDEN: Sandra Perkinson?

1 MS. PERKINSON: Yes.

2 CHAIRMAN SASSER: Mr. Bassett?

3 MR. BASSETT: I vote yes.

4 KIM SASSER HAYDEN: The motion carries with
5 33 yeses and 11 nos.

6 MR. FARMER: Two abstentions.

7 KIM SASSER HAYDEN: Two abstentions.

8 CHAIRMAN SASSER: Alright. The Primary Board
9 stands in recess. I'd like to call to order the
10 meeting of the State Executive Committee.

11 *****

12 (The above-referred to
13 document was thereupon
14 marked Smith Exhibit No.
15 1, and is attached
16 hereto.)

17 (The above-referred to
18 document was thereupon
19 marked Smith Exhibit No.
20 2, and is attached
21 hereto.)

22 (The above-referred to
23 document was thereupon
24 marked Smith Exhibit No.
25 3, and is attached
hereto.)

(The above-referred to
document was thereupon
marked Smith Exhibit No.
4, and is attached
hereto.)

(The above-referred to
document was thereupon
marked Smith Exhibit No.
5, and is attached
hereto.)

1 (4:50 P.M.)

2 (Thereupon the hearing was concluded)

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Beres & Associates

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

I, James P. Beres, Court Reporter and Notary Public in and for the State of Tennessee at Large, do hereby certify that the foregoing proceedings were taken at the time and place set forth in the caption hereof; that the witness was duly sworn on oath to testify the truth; that the proceedings were stenographically reported by me in machine shorthand, and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties hereto, nor a relative or employee of such attorney or counsel, nor do I have an interest in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal this 29th day of September, 2008, at Nashville, Davidson County, Tennessee.

JAMES P. BERES, Notary Public
for the State of Tennessee

My Commission Expires: July 28, 2010